

In The Matter Of:
Scott Ballock v.
Ellen Ruth Costlow, et al

Scott Ballock
April 19, 2019

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF WEST VIRGINIA

* * * * *

SCOTT BALLOCK,

Plaintiff,

v.

CIVIL ACTION
NO.: 1:17-CV-52

ELLEN RUTH COSTLOW,
STATE TROOPER MICHAEL KIEF,
STATE TROOPER RONNIE M.
GASKINS, AND STATE TROOPER
CHRIS BERRY,

Defendants.

* * * * *

The videotaped deposition of SCOTT T. BALLOCK taken at the insistence of the Defendant herein, pursuant to Notice as to time and place and pursuant to the statutes of the West Virginia Rules of Civil Procedure, before Donna Watkins Pizzino, Court Reporter and Notary Public, at the offices of Steptoe & Johnson PLLC, 1085 Van Voorhis Road, Morgantown, West Virginia, on the 19th day of April, 2019, commencing at the hour of 9:00 a.m.

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17 ALSO PRESENT:

18 State Trooper Ronnie M. Gaskins
19 State Trooper Michael Kief
20 State Trooper Chris Berry
21
22
23
24
25

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1 THE VIDEOGRAPHER: We are now on the
2 record. Today is April 19th, 2019. The time is
3 approximately 9:04. My name is Jason Good, CDVS, legal
4 videographer, located at 534 Meridan Street, Morgantown,
5 West Virginia. I am not affiliated with this case nor
6 do I have any financial interest in the outcome of this
7 action.

8 This video-recorded deposition of the
9 plaintiff, Scott T. Ballock is being taken at the
10 offices of Steptoe & Johnson PLLC located at 1085 Van
11 Voorhis Road, Suite 400, Morgantown, West Virginia. The
12 caption of this case is Scott T. Ballock, Plaintiff v
13 Ellen Ruth Costlow, State Trooper Michael Kief, State
14 Trooper Ronnie M. Gaskins, and State Trooper Chris
15 Berry, Defendants, Civil Action Number 1:17-cv-52, filed
16 in the United States District Court Northern District of
17 West Virginia.

18 Notice of this deposition is given by the
19 defendants. The court reporter is Donna Pizzino. Will
20 all parties please state their appearances beginning
21 with the party noticing this proceeding.

22 MR. JEFFRIES: Mark Jeffries and Monte
23 Williams for Defendants Troopers Michael Kief, Ronnie
24 Gaskins, and Chris Berry.

25 MR. PHILLIPS: Todd Phillips for Defendant

1 Ellen Ruth Costlow.

2 MR. CROOKS: My name is Charles Crooks.
3 I'm a lawyer. I'm here today on behalf of Scott
4 Ballock.

5 THE VIDEOGRAPHER: At this time will the
6 court reporter please administer the oath.

7 (The oath was administered.)

8 THE DEPONENT: I do.

9 SCOTT T. BALLOCK,
10 called as a witness by the Defendant, was first duly
11 sworn, as hereinafter certified, examined, and testified
12 as follows:

13 DIRECT EXAMINATION

14 BY MR. JEFFRIES:

15 Q. Mr. Ballock, would you state your full name for
16 the record?

17 A. Yeah. Scott Thomas Ballock, B as in boy
18 a-l-l-o-c-k.

19 Q. We met briefly before we went on the record.
20 My name is Mark Jeffries. As I just said, I represent
21 the state police defendants, and I'm here to take your
22 deposition today. Have you ever given a deposition
23 before?

24 A. No.

25 Q. Okay. Well, just as reminder, you just took

1 the oath so you're under oath the same as if you were on
2 a witness stand in court. Do you understand that?

3 A. Yes.

4 Q. The court reporter is going to make a
5 transcript of everything that I ask and every answer
6 that you give, so it's important that you give verbal
7 answers. It's common when people are talking face to
8 face to nod their head or shrug their shoulders. You
9 need to try to avoid that so she can get a good record
10 because, of course, a shrug or nod doesn't translate.

11 A. Understood.

12 Q. I may remind you of that from time to time. If
13 I do, I'm not trying to be difficult; I'm just trying to
14 make sure we get a good record.

15 A. Sure.

16 Q. Towards that same end of getting a good clean
17 transcript, it's important that you and I try very hard
18 not to talk over each other. So please let me finish
19 the question before you give an answer, and I'll try to
20 do my best to let you finish your answer before I ask
21 another question. Okay?

22 A. Sure.

23 Q. I'm going to presume that you understand my
24 questions, but if there's -- from time to time it
25 happens that a question isn't as clear as I would like

1 it to be. If you don't understand a question just let
2 me know and I'll try to rephrase it and make it a little
3 more easy to understand. Okay?

4 A. I will.

5 Q. We're probably going to be here all day. We'll
6 take some breaks. But if at any time you feel like you
7 need a break just say so and we'll be happy to go off
8 the record for a little bit. The only thing that I ask
9 is that if I have a question pending you answer the
10 question before we break. Okay?

11 A. Understood.

12 Q. Are you taking medication today?

13 A. My regular medication for high blood pressure.

14 Q. What is that?

15 A. I'm on amlodipine, high blood pressure and
16 cholesterol medication. I couldn't tell you the names
17 of them right now as we sit here.

18 Q. Would any of those medicines influence you to
19 where you wouldn't be able to provide accurate truthful
20 testimony?

21 A. No, not at all.

22 Q. Without telling me any discussions that
23 occurred, am I correct that you met with Mr. Crooks
24 before the deposition to prepare?

25 A. Yes.

1 Q. Okay. Did you review any documents?

2 A. With Charles, yes.

3 Q. What documents did you review?

4 A. Judge Alooi's memorandum.

5 Q. Anything else?

6 A. I don't believe so.

7 Q. When you say memorandum, is that the report and
8 recommendation that denied the motions to dismiss?

9 A. Correct.

10 Q. Could you speak up just a little --

11 A. Oh, sorry.

12 Q. -- having a little bit of trouble hearing you?

13 A. Correct. Sorry.

14 Q. What's your current address, Mr. Ballock?

15 A. 315 North Odell Street, o-d-e-l-l, Brownsburg,
16 Indiana 46112.

17 Q. How long have you lived there?

18 A. Since December 2017.

19 Q. Who lives there with you?

20 A. Correction. I've lived in Brownsburg since
21 December 2017. We didn't move into the house until
22 June 2018.

23 Q. Where did you live -- strike that.

24 A. At an apartment complex in Brownsburg.

25 Q. Who lives there at the house on Odell Street

1 with you?

2 A. My children Tommy and Summer.

3 Q. No one else?

4 A. No one else.

5 Q. You kind of anticipated my next question.

6 Before you moved into the house on Odell Street where
7 did you live?

8 A. I don't recall the address. It was an
9 apartment complex in Brownsburg.

10 Q. Where did you live prior to that?

11 A. 51 Summit Overlook Drive.

12 Q. That's the house you shared with Ellen Costlow
13 when you were married?

14 A. Correct.

15 Q. That's here in Morgantown?

16 A. Correct.

17 Q. What's the highest level of education you've
18 received?

19 A. Master's degree.

20 Q. In what subject?

21 A. Criminal justice studies.

22 Q. Where did you obtain that?

23 A. Indiana University, Bloomington, Indiana.

24 Q. So you have a bachelor's degree. What's your
25 bachelor's in?

1 A. General studies.

2 Q. Where did you receive that?

3 A. Indiana University, Bloomington, Indiana.

4 Q. Any other degrees?

5 A. No.

6 Q. When did you obtain your bachelor's?

7 A. 1994 -- 1991. 1991.

8 Q. When did you obtain your master's?

9 A. 1994.

10 Q. When did you start working for the FBI?

11 A. June 1st, 2003.

12 Q. When you first started with the FBI, what was
13 your job title?

14 A. Special agent.

15 Q. What were your job duties as a special agent?

16 A. They varied. In my first assignment in
17 Indianapolis I was assigned to the violent crimes and
18 major offender squad, VCMO. I investigated bank
19 robberies, fugitives, kidnappings.

20 Q. And then your next assignment after
21 Indianapolis?

22 A. I was transferred to Detroit division in 2006,
23 routine transfer for new agents. I was assigned to the
24 Ann Arbor resident agency where I investigated all
25 violations with an emphasis on counter-terrorism and

1 counter-intelligence matters.

2 Q. So, I want to make sure I understand. You were
3 at the Ann Arbor resident agency, but that falls under
4 the Detroit field office?

5 A. Correct.

6 Q. So you didn't actually work physically at
7 Detroit; you were physically at Ann Arbor?

8 A. My office was in Ann Arbor.

9 Q. Okay.

10 A. Yeah.

11 Q. So, am I correct then that, basically, your job
12 duties as a special agent, speaking generally, were
13 investing crimes, apprehending suspects --

14 A. Correct.

15 Q. -- making arrests?

16 A. Yes.

17 Q. Anything else that I'm missing? I mean, my
18 knowledge of the FBI comes from TV and movies.

19 A. Developing informants, working with the CIA to
20 develop informants to work against terrorists overseas.

21 Q. Where did you go after Ann Arbor?

22 A. I was promoted to supervisory special agent at
23 CJIS in Clarksburg, West Virginia. I started there in
24 August of 2011.

25 Q. Was that your first supervisory position?

1 A. Yes.

2 Q. You said August 2011?

3 A. Correct.

4 Q. What was your chain of command there at CJIS?
5 So who was your supervisor?

6 A. I had a unit -- when I left -- when I was last
7 there or throughout the whole time?

8 Q. Let's just go when you --

9 A. I've had a few.

10 Q. Who was your first supervisor?

11 A. Jeff Lindsey, L-i-n-d-s-e-y, and then Michael
12 Haas, H-a-a-s, and then Soo Barrow, S-o-o, Barrow,
13 B-a-r-r-o-w.

14 Q. And am I correct that that's not a result of
15 you moving around. That's the result of those
16 supervisor -- changes in the supervisor?

17 A. It was a result of both of those things.

18 Q. Okay. All right. So let's break that down
19 then. When you first started at CJIS, what, I guess,
20 division or office did you work in? It's a huge
21 facility.

22 A. Yeah. It's called N-DEx, the National Data
23 Exchange. It's a program that the bureau developed to,
24 essentially, connect all criminal justice agencies'
25 databases so that when a law enforcement officer or an

1 analyst runs someone's name or license plate or an
2 address, they're not just searching their own databases
3 but all other databases throughout the country.

4 Q. And Jeff Lindsey was your supervisor there?

5 A. Correct. And then when he left, Michael Haas
6 was my supervisor there.

7 Q. Okay. And then where did you work after N-DEx?

8 A. The public access line.

9 Q. Public access line?

10 A. Yes.

11 Q. What's that involve?

12 A. When you call your local FBI office to report a
13 crime or to talk to an agent, you're not calling --
14 you're transferred to CJIS where trained analysts answer
15 the phones, interview you, take your information, and if
16 appropriate write up a report and send it to the field.

17 Q. So anyone anywhere in the country looks up, you
18 know, your local FBI office and picks up the phone and
19 thinks they're calling, you know, the Ann Arbor office,
20 it's actually -- they're speaking to someone at CJIS?

21 A. That's right, if they're calling to report
22 something.

23 Q. I didn't know that. Was Soo Barrow your
24 supervisor there?

25 A. Yeah. First Jeff -- actually, that's where

1 Jeff Lindsey went. So, first him, and then Soo Barrow.

2 Yeah.

3 Q. Did you work anywhere after that?

4 A. No.

5 Q. When were you and Ellen Costlow married?

6 A. June of 1990 -- 1991? 1991.

7 Q. Where were you married?

8 A. Bloomington, Indiana.

9 Q. Was that your first marriage?

10 A. Yes.

11 Q. Was it hers?

12 A. Yes.

13 Q. I believe you said you have two children;
14 correct?

15 A. Yeah.

16 Q. Summer and Tommy?

17 A. Correct.

18 Q. What are their ages?

19 A. Summer is now 15. She'll be 16 in three weeks,
20 less than three weeks. And Tommy is 18.

21 Q. Now, I understand from reviewing the file here
22 that at some point in your marriage Ellen began seeing
23 other men; is that correct?

24 A. Correct.

25 Q. When did that begin?

1 A. When we were assigned to Indianapolis division.

2 Q. Do you know what year?

3 A. 2003.

4 Q. Were you aware that she was seeing other men?

5 A. Yes.

6 Q. How did she meet these men?

7 A. Online and in person.

8 Q. When you say online, how did she meet them
9 online?

10 A. Craigslist.

11 Q. Any other methods or websites she used?

12 A. Yeah. Yes, that's the website she used. I
13 don't know of any others.

14 Q. Okay. All right. I'm sorry I wasn't clear
15 there.

16 You said she met them online and in person.
17 Would she first make contact with them through
18 Craigslist?

19 A. Uh-huh.

20 Q. I need a verbal answer.

21 A. Oh, I'm sorry. You're right. Yes.

22 Q. And then she would arrange an in-person
23 meeting; is that correct?

24 A. Yes.

25 Q. Okay. Did you ever post ads on Craigslist for

1 her?

2 A. No.

3 Q. Did you ever respond on her behalf to responses
4 that she had received from her Craigslist ads?

5 A. No.

6 Q. Did you screen the men that she was seeing?

7 A. No.

8 Q. Before she started posting these ads on
9 Craigslist, did she discuss this with you?

10 A. After.

11 Q. After?

12 A. Uh-huh.

13 Q. So she had been doing it for some time and then
14 you learned about it?

15 A. Correct.

16 Q. How did you learn that she was meeting men
17 through Craigslist?

18 A. We had -- I had suspicions and confronted her
19 and she shared it with me.

20 Q. How did you become suspicious?

21 A. She just wasn't very good at covering her
22 tracks. She was distant.

23 Q. Anything else?

24 A. No.

25 Q. So she just kind of got distant and you thought

1 something was up?

2 A. Yeah.

3 Q. Did you ask her are you seeing other men or did
4 you just ask her, you know, generally, what's up, why
5 are you so distant or --

6 A. I don't recall specifically, but probably are
7 you seeing other men.

8 Q. Okay. And then she confessed to you that she
9 was soliciting men through Craigslist?

10 A. Yes.

11 Q. And you, at that point, did not divorce her;
12 correct?

13 A. Correct.

14 Q. And she continued to see men on Craigslist or
15 through Craigslist after you confronted her; correct?

16 A. Correct.

17 Q. Did you record any of her encounters with these
18 other men on video?

19 A. No.

20 Q. Did anyone record the encounters?

21 A. She did.

22 Q. Anyone else?

23 A. Not that -- not that I'm aware of.

24 Q. Did you watch videos of your wife having sex
25 with other men?

1 A. Yes.

2 Q. How often?

3 A. Not very often, just to confirm that it was
4 happening.

5 Q. Did you ever have sexual relations with anyone
6 else while you and Ellen were married?

7 A. No.

8 Q. So, kind of the crux of this matter, what led
9 to us being here today was after you two -- the four of
10 you moved here to Morgantown, the transfer to CJIS,
11 Ellen began seeing a man called Kenny Ice; correct?

12 A. Kenny Ice, Jr; correct.

13 Q. When did you become aware that Ellen was seeing
14 Kenny Ice? And I'll just refer to him as Kenny Ice, but
15 you're correct there's Kenny Ice Junior and Senior, and
16 she was seeing the junior. So when did you become aware
17 that she was seeing Kenny Ice?

18 A. In the summer of 2011.

19 Q. How did you learn that?

20 A. She told me about it.

21 Q. Why did she tell you?

22 A. Because she said if we couldn't get things
23 straightened out that she was going to leave me for him.

24 Q. So I take it you two were having some marital
25 problems at that point?

1 A. Yes.

2 Q. What kind of marital problems?

3 A. She has mental disorders, and she was very
4 moody and violent and difficult. It was like walking on
5 egg shells around her. She -- for her part, I didn't
6 give her the attention that she wanted. All my
7 attention was focused on the children. Instead of
8 having date nights, I would insist that whatever we did
9 recreationally or vacation-wise was with the children.
10 I neglected her emotional needs.

11 Q. Okay. Now, so you said that you first became
12 aware that she was seeing Kenny Ice in the summer of
13 2011?

14 A. Yes.

15 Q. And you guys didn't separate until September
16 2012; is that correct?

17 A. So then I need to make a correction. She met
18 him in the summer of 2012, about June. You're correct.
19 We moved to West Virginia in 2011. A year -- almost a
20 year later, in June 2012, is when she met Kenny
21 Ice, Jr., and we were separated, that's correct, in
22 September of 2012.

23 Q. Now, if she had been seeing other men since
24 2003 -- so at this point it would have been nine years
25 -- why was it an issue when she began seeing Kenny Ice?

1 A. It was always an issue. I would ask her to
2 stop. I would beg her to stop. She would for a while.
3 And then she would resume. When we moved here, we had
4 an agreement that it was going to be a fresh start and
5 she wouldn't engage in that behavior.

6 Q. So, summer of 2012, she begins -- you learn
7 that she's seeing Kenny Ice. Do you know when she
8 actually started seeing him?

9 A. I believe it was June 2012.

10 Q. So you learned about it almost about the same
11 time it began happening?

12 A. No. I learned a little bit later.

13 Q. About when did you become aware that she began
14 seeing him?

15 A. Maybe August of 2012.

16 Q. Had you -- did the two of you separate at any
17 time during the marriage before 2012?

18 A. Not for any length of time. I would often
19 spend the night in my government car at the office to
20 escape the home. That happened many times, but I never
21 moved out.

22 Q. So just for, like, a night or so?

23 A. Yeah. If she was violent and throwing things
24 or making threats, I would leave and go sleep in the car
25 at the office, take a shower at the gym in the morning.

1 Q. So, September 2012, you and Ellen separate?

2 A. Uh-huh.

3 Q. She -- am I correct that she stayed in the
4 house at 51 Summit Overlook?

5 A. Yes.

6 Q. And where did you live?

7 A. I moved to an apartment in downtown Morgantown.

8 Q. Do you know the address?

9 A. I do not.

10 Q. Who filed for divorce?

11 A. She filed for divorce.

12 Q. Do you know when that was?

13 A. Around September 2012.

14 Q. So shortly after you separated?

15 A. Yes, very shortly. Maybe October 2012, but
16 shortly.

17 Q. Approximation is good enough.

18 A. Okay.

19 (Deposition Exhibit No. 1 was marked for
20 identification.)

21 Q. Mr. Ballock, I've handed you what's been marked
22 as Exhibit 1.

23 A. Yes.

24 Q. I'll represent to you that we got this from the
25 -- we requested and received the prosecuting attorney's

1 file in the criminal prosecution that underlies this
2 matter.

3 A. Uh-huh.

4 Q. Did you create this timeline?

5 A. I did.

6 Q. Do you know when you did?

7 A. I don't. I should have dated it.

8 Q. Was it -- it was created for the criminal --

9 A. Correct. Yes.

10 Q. -- at some time during the criminal action?

11 A. Yes.

12 Q. Okay. We'll have a number of exhibits today,
13 but I'd ask you to kind of set this one aside because
14 we'll be coming back and referring to it from time to
15 time. It's, frankly, a pretty comprehensive
16 chronological listing of what went on.

17 We'll move on to Exhibit 2.

18 (Deposition Exhibit No. 2 was marked for
19 identification.)

20 Q. Mr. Ballock, take a look at the bottom of the
21 first page there. You'll see an email from
22 ScottBallock@yahoo.com, November 7th, 2012, to
23 EllenBallock@yahoo.com. Do you see where I am?

24 A. Yes.

25 Q. If you flip it over to the next page you'll see

1 that it appears that that email is in response to one
2 sent from Ellen Ballock on November 7th, 2012. Do you
3 see that?

4 A. Yes.

5 Q. Okay. Did you -- do you recall this email
6 exchange between you and Ellen?

7 A. Not specifically.

8 Q. Do you have any reason to believe that it's not
9 sent from you through your Yahoo account?

10 A. No.

11 Q. We've got thousands of emails, and I don't
12 believe that at any point in the criminal prosecution or
13 in the divorce that there was any question as to the
14 authenticity of them. So to save us time, I'm not going
15 to ask you to verify each and every email. But I will
16 ask that if you see one that you don't think you ever
17 sent, that you don't think is genuine, please let me
18 know. Otherwise, I'll presume that today you don't
19 contest the authenticity of the email. Okay?

20 A. Okay.

21 MR. CROOKS: That's agreeable.

22 Q. So if you go to the second page at the top of
23 Ellen's email on November 7th, she said, "I've asked you
24 many times to leave me alone. This is my last request.
25 Please refrain from sending harassing emails and texts

1 as well as any other means of communication."

2 And then your response on the first page says,
3 "My correspondence has been polite and respectful.
4 Calling it harassing does not make it so. I am simply
5 providing you with information and recommendations for
6 the divorce process and the benefit of the children."
7 Did I read that correctly?

8 A. Is that on the first page?

9 Q. On the first page at the bottom in response to
10 Ellen saying --

11 A. Oh, yes.

12 Q. -- leave me alone --

13 A. Okay. Yes.

14 Q. And you said, "My correspondence has been
15 polite and respectful."

16 A. Yes.

17 Q. "I am simply providing you with information and
18 recommendations for the divorce process and the benefit
19 of the children."

20 A. That's correct.

21 Q. Do you see that?

22 A. Uh-huh.

23 Q. And you told her that -- she had characterized
24 your communications as harassing. She said, "Please
25 refrain from sending harassing emails and texts." And

1 you said, "Calling it harassing does not make it so."
2 Kind of on the flip side, does your stating that the
3 communications are not harassing make it so?

4 A. I'm sorry. I don't understand the question.

5 Q. Sure. It may not have been the best one.

6 MR. CROOKS: I think it's a legal
7 question.

8 Q. You had told Ellen, "Calling it harassing does
9 not make it so," calling the correspondence harassing
10 does not make it so. Does the reverse also apply,
11 simply because you said it wasn't doesn't mean that it's
12 not?

13 A. I don't believe I was harassing her.

14 Q. But is that just because you said it wasn't
15 harassing?

16 A. Not because I said it, but because I don't
17 believe that it was harassing.

18 Q. Okay.

19 (Deposition Exhibit No. 3 was marked for
20 identification.)

21 Q. Okay. I've handed you what's been marked as
22 Exhibit 3.

23 A. Uh-huh.

24 Q. This is an email. The one that is at issue
25 here is at the bottom of the first page, sent from you

1 on September 26, 2012, the subject line, "Hatred
2 Exposed." So this would have been -- do you recall the
3 exact date that the two of you separated?

4 A. September 14th.

5 Q. Okay. This was sent September 26, so less than
6 two weeks later?

7 A. Yes.

8 Q. Was this about the divorce process or the
9 children?

10 A. Everything was about the children.

11 Q. So that's your position, that everything that
12 you spoke to her about was about the children?

13 A. Everything that I did and all of my actions
14 were for the benefit of the children.

15 Q. Okay. Where in this email are the children
16 mentioned?

17 A. The children aren't mentioned in this email.

18 Q. And how is it for the benefit of the children
19 for you to say that her hatred was exposed?

20 A. My attempts at writing her were to reconcile.
21 The things that I wrote were done in an attempt to
22 reconcile with her because I was concerned about the
23 children's future and the children's welfare.

24 Q. And saying that her hatred was exposed, was
25 that polite and respectful?

1 A. I don't think it was impolite or disrespectful.

2 (Deposition Exhibit No. 4 was marked for
3 identification.)

4 Q. I'm handing you another email that's been
5 marked as Exhibit 4. The one that I want to focus on is
6 on the top half of the page, September 30th, 2012 at
7 1:38 a.m., subject "Final Poem." This one is short.
8 "Black boots, black coat, black heart, black soul." Was
9 that about the divorce process?

10 A. In general.

11 Q. Was it about the children?

12 A. It wasn't about the children. Again, it was in
13 an attempt to reconcile on behalf of the children.

14 Q. Is it your position that saying that Ellen had
15 a black heart and black soul was polite and respectful?

16 A. I don't think it was impolite nor
17 disrespectful.

18 Q. Do you believe that anyone who received that
19 poem could find it impolite or disrespectful?

20 A. Under different circumstances, perhaps.

21 (Deposition Exhibit No. 5 was marked for
22 identification.)

23 Q. I've handed you what's been marked as
24 Exhibit 5. The second email from the top, sent from you
25 to Ellen, October 2nd, 2012, subject "Last Text." "If

1 you want to avoid any potential embarrassment, don't
2 come down tonight with your date." What was that about?

3 A. I don't recall.

4 Q. Was it about the divorce -- was this email
5 about the divorce process or the children?

6 A. I don't recall what it was about. I don't
7 recall the email.

8 Q. You don't believe that you sent this email?

9 A. Oh, I think there was a -- no. I'm not saying
10 I didn't send it. I don't recall what it was about. I
11 don't recall why I didn't want her to come downtown. I
12 don't know.

13 (Deposition Exhibit No. 6 was marked for
14 identification.)

15 Q. I've handed you what's been marked as
16 Exhibit 6. This is a longer email and we're just going
17 to focus on parts of it.

18 A. Yes.

19 Q. You see it's, at the top of the first page,
20 dated October 2nd, 2012, subject line "I'm sorry."

21 A. Yes.

22 Q. And about halfway down, I guess, you'll see you
23 write, "You will ultimately regret your decision to
24 leave, to drive south instead of downtown tonight." Do
25 you see where I am?

1 A. No, but I have no reason to doubt it.

2 Q. Then a few lines below that, "I regret my
3 choices now. You will regret yours later when one day
4 you wake up in Fairmont or some other crummy West
5 Virginia town, the kids at home with me, look around and
6 realize where you are and who you are with and that sex
7 cannot fill you in the ways you truly need and knowing
8 that I am fulfilling someone else in meaningful ways."

9 A. Uh-huh.

10 Q. Was this about the divorce process or the kids?

11 A. Both.

12 Q. When you said that you'll regret your choices
13 later when you wake up in Fairmont and the kids at home
14 with me, were you implying that you were going to get
15 custody of the children?

16 A. Yes.

17 (Deposition Exhibit No. 7 was marked for
18 identification.)

19 Q. I've handed you what's been marked as
20 Exhibit 7. Just above the halfway point on the page,
21 there's an email, October 7th, 2012, from you to Ellen
22 subject line "Choices." Do you see where I am?

23 A. Yes.

24 Q. Okay. And then in the second paragraph of that
25 email, the second sentence, you say, "Ask anyone, save

1 for those you pay cash to and those who stick their dick
2 in you," if it's healthy to make -- "if it's healthy to
3 immediately begin dating and having sex." Do you
4 believe that was polite and respectful?

5 A. Under the circumstance, yes.

6 Q. Then four lines on down you say, "Reverse the
7 roles and tell them it's me who is leaving the kids at
8 home to go have sex with a dirty troll." Again, do you
9 believe that was polite and respectful?

10 A. Under the circumstances, yes.

11 Q. What were the circumstances that would make
12 that polite and respectful?

13 A. Ellen -- where to begin? Ellen was abusing and
14 harming my children in a variety of ways, so much so
15 that they're still suffering from it. And that's the
16 way we spoke to each other in general anyway, so it's
17 not -- it wasn't something -- those weren't words that
18 we wouldn't normally use.

19 Q. Even before your marital difficulties you spoke
20 to each other that way?

21 A. Sure.

22 Q. When you say she was harming the children --
23 I'm sorry. I think the word you used was abusing the
24 children.

25 A. Yes.

1 Q. Physically abusing them?

2 A. Yes, one of them.

3 Q. Which one?

4 A. Tommy.

5 Q. How did she physically abuse him?

6 A. She would put her forearm in his throat. He
7 had long hair. She would pull his hair. She would
8 punch him, so much so that on one night he called 911
9 for help. After the police left, Ellen told him -- and
10 he will testify to this -- that she said as long as I
11 don't leave bruises on you there's nothing they can do
12 to me.

13 Q. You said harm them in many ways. Would she --
14 besides physical abuse, how else would she harm them?

15 A. Where to begin? She -- I drove here last night
16 with my daughter Summer. And she asked what this was
17 all about today. And I asked her -- I told her what I
18 was being accused of and what she thought of that. And
19 she was shocked because she said you're the most gentle
20 and peaceful guy that Tommy and I know, and quite the
21 opposite, mom is extremely violent and angry and
22 aggressive toward us. Summer has taken it upon herself
23 in her new home to tell her pastor and others --

24 Q. I'd like to -- I'm sorry, but I'd like to
25 interrupt you because we're kind of getting off track.

1 A. I'm trying to describe to you --

2 MR. CROOKS: -- answer the question.

3 A. I'm trying to describe to you how aware they
4 were of the physical and emotional abuses.

5 She's told her pastor and others that, should
6 mom show up at any of our events, you're to protect me.
7 She said to me -- she admitted to me last night that she
8 was directed by her mother to lie to the guardian ad
9 litem, to the psychiatrist, to the counselor, to me, and
10 to others about the things that she was experiencing and
11 her mom was exposing her to. And she thanked me for
12 saving her. She said I'm disgusted at how mom treated
13 me.

14 Q. Okay. You only barely got into answering my
15 question. My question wasn't how are your kids taking
16 it or what were they aware of. My question was what was
17 she doing. And the only part of an answer I got there
18 was that she was directing Summer to lie to the --

19 A. She was directing Summer to lie. She was
20 taking Summer late at night to a bar in Fairmont, West
21 Virginia. She was failing to get her to school. She
22 was failing to tend to her needs. She was exposing
23 Summer to violence between Kenny and her.

24 She was using narcotics in the home. She
25 attempted suicide on a couple of different occasions in

1 the home. She left Summer outside. Summer, at one
2 time, was outside for several hours, couldn't get in the
3 house while her house -- while her mother and Kenny were
4 inside having sex, so much so that she finally had to
5 call police to get into the house to arouse her mother.

6 Summer says that her mom was so sleepy and/or
7 drugged up on Christmas morning that year that Summer
8 sat and cried opening her presents and saying, "Mommy,
9 please watch me open my present," but her mom wouldn't
10 wake up. She --

11 Q. Let me --

12 A. She would yell --

13 MR. CROOKS: I object to your interrupting
14 him. He's answering your question.

15 MR. JEFFRIES: Okay.

16 A. She would yell at the children.

17 MR. JEFFRIES: I believe I'm allowed to
18 ask the questions I want --

19 MR. CROOKS: You're allowed to ask a
20 question, but you're not allowed to interrupt him --

21 MR. JEFFRIES: Well he's not allowed to
22 drone on for hours. When he's --

23 THE DEPONENT: I've not been going on for
24 hours.

25 MR. CROOKS: He's got a lot of information

1 for you in response to your question.

2 THE COURT REPORTER: One at a time. One
3 at a time.

4 THE DEPONENT: I've not been going on for
5 hours.

6 She would yell at the children. She would
7 scream at the children. She would hit the -- Tommy.
8 She didn't hit Summer. Summer said she was so afraid of
9 her mother. And I asked, "Why? Are you afraid that
10 she's going to come after you next?" And Summer said,
11 "No. I'm afraid what she's going to do next to Tommy."

12 BY MR. JEFFRIES:

13 Q. Had she done all this by October 7th, 2012,
14 when you sent this email?

15 A. Yes.

16 Q. So, Christmas, you mentioned that she had done
17 some things on Christmas. That had occurred by
18 October 7th, 2012?

19 A. Not that.

20 Q. That's what I'm asking. At the time that you
21 sent this email what had happened?

22 A. Yes.

23 Q. Okay.

24 A. So all of these emails you need to read in the
25 context of what I was experiencing and what my children

1 were experiencing.

2 (Deposition Exhibit No. 8 was marked for
3 identification.)

4 Q. All right. Mr. Ballock, you've been handed
5 what's been marked as Exhibit 8.

6 A. Yes.

7 Q. I want to focus on the bottom half of the page,
8 the email October 9th, 2012, subject line "The End." Do
9 you see where I am?

10 A. Yes.

11 Q. You tell Ellen, "This will be my last personal
12 correspondence with you. All future communication to
13 include discussions about the division of assets and
14 custody/visitation arrangements will occur between our
15 attorneys."

16 I take it from that that you agreed that the
17 two of you could work out your differences through
18 communications between your attorneys; correct?

19 A. I hoped.

20 Q. Down at the very bottom of the page you say,
21 "Tell your counselor kudos for another fantastic
22 recommendation to explore the possibility of love with a
23 troll." Do you believe that was polite and respectful?

24 A. I don't believe it was impolite nor
25 disrespectful, again, under the circumstances and given

1 the way that Ellen and I communicated with each other
2 generally.

3 (Deposition Exhibit No. 9 was marked for
4 identification.)

5 Q. All right, Mr. Ballock. You've just been
6 handed Exhibit 9. It's several pages long.

7 A. Uh-huh.

8 Q. You can count them if you like, but I'll
9 represent to you that I counted a total of 40 emails you
10 sent to Ellen this day between 7:30 a.m. and 9:42 p.m.
11 Do you have any reason to doubt that's how many emails
12 you sent?

13 A. No reason to doubt it.

14 Q. Okay. If you go to the very back page, 50 --
15 down at the bottom you see page 594?

16 A. Yes.

17 Q. At the very top at 8:08 p.m., on October 11th,
18 2012, you sent her an email and said, "You have
19 convinced me that you have moved way beyond" -- it says
20 pint. I believe that's supposed to be point -- "of any
21 possible reconciliation." Do you see that?

22 A. Okay.

23 Q. Do you agree that it's supposed to be point
24 instead of pint?

25 A. Yes.

1 Q. Typographical. If, as of October 11th, 2012,
2 you were convinced that the two of you were beyond the
3 point of any possible reconciliation why did you
4 continue to send her additional emails and texts seeking
5 to reconcile?

6 A. Because what you've not provided are her emails
7 to me or her text messages to me or the phone calls to
8 me or the unannounced appearances at my residence in
9 between these -- all of these emails.

10 Q. Okay. Go to page 588. Just for context, that
11 email we just discussed was sent at 8:08 p.m.

12 A. Uh-huh.

13 Q. Go to page 588, there on the bottom quarter at
14 8:12 p.m., four minutes later, Ellen writes you, "Stop.
15 It will all get figured out in the end. Leave me alone
16 now." Do you see where I am?

17 A. I do.

18 Q. Okay. And your response was two minutes later
19 at 8:14 p.m., to say among other things, "We can work on
20 our relationship."

21 A. Okay.

22 Q. Six minutes ago you had said that the two of
23 you were beyond the point of any possible
24 reconciliation, but at this point you're seeking to
25 reconcile. Why is that?

1 A. It was a very difficult time. I was trying to
2 figure out my emotions. On one -- some part of me
3 wanted to divorce her. And some part of me didn't want
4 to divorce her.

5 Q. Okay. You just said that I wasn't aware of the
6 context of the texts, emails, and phone calls and
7 personal visits she was making. Did she make any
8 between 8:08 p.m., when you said we're beyond the point
9 of any possible reconciliation and 8:14 p.m., when you
10 said we can work on our relationship?

11 A. I don't know.

12 Q. Okay. Let's go to page 586. Midway down the
13 page at 8:15 p.m., Ellen writes, "I asked what you
14 needed me to place in the garage. One simple email
15 would have sufficed, Scott." Do you see that?

16 A. I'm seeing it on yours. Yes.

17 Q. Do you see it on yours? I want you to be able
18 to follow along. It's just beyond the halfway point,
19 the bottom half of the page.

20 A. Okay. Yes.

21 Q. Okay. And then your response was, "I gave you
22 one email. Then you questioned about the Bose, so I
23 explained." In context, there is some discussion here
24 about what personal property you want her to leave and
25 whether you or she should get the Bose radio. But then

1 you go on to send her another 18 emails after this one.

2 A. Okay.

3 Q. Do you not believe that that is harassment,
4 especially after she had told you to please stop and
5 leave me alone?

6 A. I don't believe it's harassment.

7 (Deposition Exhibit No. 10 was marked for
8 identification.)

9 Q. You've been handed Exhibit 10. This is an
10 October 15th, 2012 email. This one is from Ellen to
11 you. And there at the very bottom of page 567 -- do you
12 see where I am?

13 A. Yes.

14 Q. She says, "Scott, you abused me, had an affair,
15 neglected me emotionally, et cetera, for years on end."
16 And then she goes on at the top of page 568. "As you
17 beg for me to come back you also wrote horrible, nasty
18 things about me."

19 And then she continues at the end of this
20 paragraph, "To continue to write me all day and into the
21 wee hours of the morning (hundreds of texts and emails a
22 day) when I have asked you to stop is not love."

23 Would you agree with me that Ellen is making it
24 clear here that she did not find your emails polite and
25 respectful?

1 A. She doesn't say that.

2 Q. And you don't think that when she said, "You
3 also wrote horrible, nasty things about me," she took
4 that to be polite and respectful?

5 A. I don't know. You'll have to ask Ellen.

6 Q. Okay. Would you agree that she's also making
7 it clear that she doesn't -- that she considers you
8 sending her hundreds of texts and emails a day when
9 she's asked you to stop to be harassment?

10 A. That was what she said in this email. I can't
11 tell you what she then said to me afterwards because,
12 between the emails, I would receive phone calls and
13 visits and text messages from Ellen to include things
14 like I love the poems you wrote, to include things like
15 just give me until September and we'll see where we are,
16 to include things like this is really hard.

17 (Deposition Exhibit No. 11 was marked for
18 identification.)

19 Q. You've been handed Exhibit 11. What we're
20 looking at here is, again, just a little more than
21 halfway down the page, October 20th, 2012, at 7:06 p.m.
22 Do you see where I am?

23 A. Yes.

24 Q. You sent an email in response to something she
25 had said. You said, "You are not street smart and are

1 easily manipulated, especially when cock is involved."

2 Do you believe that was polite and respectful?

3 A. I don't believe it was impolite nor
4 disrespectful considering the way we normally spoke with
5 each other and considering the circumstances.

6 (Deposition Exhibit No. 12 was marked for
7 identification.)

8 Q. Exhibit 12 is an email the next day,
9 October 21st, 2012. A little over halfway down the page
10 at 2:35 a.m. Do you see where I am?

11 A. Yes.

12 Q. And you tell her, "You are something else. I
13 provide for you, protect you, say loving things to you,
14 and you say okay. Kinny bangs you" -- and it's spelled
15 K-i-n-n-y.

16 A. Yes.

17 Q. "Kinny bangs you and you tell him you love
18 him." Was this about the divorce process or the kids?

19 A. Again, all of my messages were done in an
20 attempt to reconcile or to help her see what she was
21 doing and, ultimately, for the benefit of the kids.
22 Yes.

23 Q. And why did you spell Kenny with lower case K
24 and an I instead of an uppercase K and an E?

25 A. Because he pronounces his name kinny.

1 Q. So is that taking a dig at him?

2 A. Yeah.

3 Q. Was this email polite and respectful?

4 A. I don't believe it was impolite nor
5 disrespectful given the circumstances, given the way
6 Ellen and I normally spoke with each other. I do
7 believe it was impolite and disrespectful to Kenny.

8 (Deposition Exhibit No. 13 was marked for
9 identification.)

10 Q. Exhibit 13. Towards the bottom of the page is
11 an email from you 11/11/2012 at 11:11 a.m., subject line
12 "Sunday." Do you see that? Actually, a little below
13 that, November 11th, 2012 at 11:08 a.m., Ellen Ballock
14 writes -- do you see where I am?

15 A. Yes.

16 Q. She told you to stop, and your response was,
17 "Do you think anymore?" Why didn't you stop emailing
18 her when she asked you to?

19 A. Please point out...

20 Q. Almost to the bottom, November 11th, 2012,
21 11:08 a.m., Ellen writes one word, "Stop." Do you see
22 that?

23 A. Yes.

24 Q. Your response is just above it, three minutes
25 later, at 11:11 a.m., "Do you think anymore?"

1 And my question is she tells you at 11:08 to
2 stop and you email her again three minutes later. Why
3 didn't you stop when she asked you to?

4 A. What were we discussing here? Were we
5 discussing plans with the children?

6 Q. You had said, "Plans have changed. Very short
7 and curt answers. No cooperation."

8 A. So I'm thinking that we were discussing plans
9 with the children. Often I -- my emails were to discuss
10 plans with the children. And she would tell me during
11 those conversations even to stop, which was difficult
12 when I needed to have her cooperation with regard to the
13 transfer of the children or vacation plans or school
14 plans or extracurricular activities.

15 Q. So is that why you didn't stop when she told
16 you to?

17 A. I'd have to see the full context of this. But,
18 again, between these she would call me or she would
19 visit me.

20 (Deposition Exhibit No. 14 was marked for
21 identification.)

22 Q. Exhibit 14, just above the top half of the page
23 is an email from Ellen to you, November 15th, 2012, at
24 9:35 p.m. Do you see where I am?

25 A. Yes.

1 Q. And she writes, "You fantasize like a child
2 that I will want you at some point in time and you will
3 be able to turn me down saying it's too late. That will
4 never happen. I have no interest in you. Not now, not
5 in a year, not in a decade, not for the remainder of
6 your life."

7 Now, even though you had stated on October 11th
8 that you recognized that she was way beyond the point of
9 any possible reconciliation, when you received this
10 email, was there any doubt in your mind that she was not
11 interested in reconciliation?

12 A. Yes, there was doubt in my mind.

13 (Deposition Exhibit No. 15 was marked for
14 identification.)

15 Q. Exhibit 15, focusing on an email here at the
16 bottom, November 22nd, 2012. It goes on, "How could you
17 be so cruel as to let me write these poems," so on and
18 so forth. And then at the end you write, "Pure evil. I
19 will never forgive you."

20 Was this about the divorce process or the kids?

21 A. Both.

22 Q. Do you believe it was polite and respectful?

23 A. I don't believe it was impolite nor
24 disrespectful given the nature of the circumstances nor
25 the way we normally spoke with each other.

1 (Deposition Exhibit No. 16 was marked for
2 identification.)

3 Q. Exhibit 16. At the very top is an email sent
4 from webmaster@moc.freep.com, and then in brackets is
5 your Yahoo account, December 7th, 2012, subject "Two
6 years later, Morenci mom holds out hope that three boys
7 are still alive."

8 A. Yeah.

9 Q. It looks to me that this was -- you were
10 forward -- on the newspaper online and forwarded an
11 article to Ellen; is that correct?

12 A. Correct.

13 Q. What was this about?

14 A. That was a case I investigated in Michigan
15 where three boys were taken from their mother.

16 Q. Who took them?

17 A. We believed their father, and we believe he
18 killed them.

19 Q. Why did you send this to her?

20 A. Because Ellen did a very wonderful thing that I
21 thought. One of my assignments was to, because of my
22 personality, was to be the liaison with the victim
23 mother and to be with her all day and to keep her
24 updated on things that we found, if we needed a hair
25 sample or a brush sample to get it from her.

1 She was very poor, and her bible was old. And
2 Ellen went out and bought a really expensive, nice bible
3 and gave it to the pastor to give to her.

4 Q. Okay.

5 (Deposition Exhibit No. 17 was marked for
6 identification.)

7 Q. Exhibit 17 is an email. At the bottom of the
8 first page, December 15th, 2012, subject line "And as if
9 on cue." Do you see that?

10 A. Yeah.

11 Q. About midway through the first paragraph
12 discussing your daughter Summer you say, "She
13 volunteered that kinny" -- again, spelled with a lower
14 case K and an I.

15 A. Uh-huh.

16 Q. -- "that kinny doesn't speak right, is gross,
17 and can never replace me. (How awful for you to expose
18 her to him." Do you believe that was polite and
19 respectful?

20 A. I don't believe it was disrespectful nor
21 impolite given the nature of the circumstances, given
22 the fact that Kenny was a bad influence, given the fact
23 that I was concerned for my children's welfare and
24 safety.

25 Q. Okay.

1 A. I had three -- my supervisor approached me one
2 day. And he said that he had three different law
3 enforcement agents approach him and tell him that Kenny
4 Ice, Jr., was violent and a low-level drug dealer and
5 that I should be careful and make sure that I carry my
6 weapon with me at all times because he was one who would
7 confront me. So that's the information I had in the
8 back of my mind when I knew Ellen was exposing my
9 children to him.

10 Q. Did your supervisor tell you that Kenny didn't
11 speak right and was gross?

12 A. No. I knew that and my children knew that.

13 Q. Okay. Let's go to the second page of this
14 email.

15 A. Yeah.

16 Q. The third full paragraph from the top.

17 A. Uh-huh.

18 Q. It starts off, "I don't care why you say you
19 left." Do you see the paragraph I'm at?

20 A. Yeah.

21 Q. About midway down you write, "We both were bad
22 to each other."

23 A. Yes.

24 Q. What did you do that was bad?

25 A. Like I said before, I neglected her. I

1 neglected her emotions. I put all my energy into work
2 and the children. I didn't take her on dates. I was
3 bad to her in that respect.

4 Q. Okay. Then the next sentence after that says,
5 "As is yours, my counselor is appalled at some of the
6 things I share." Which counselor were you referring to?

7 A. I forget her name. She's on the list. It's a
8 very unique last name.

9 Q. Kathie Gieselman?

10 A. That's it.

11 Q. What did you tell your counselor that she was
12 appalled about?

13 A. Ellen's behaviors toward the children.

14 Q. None of yours?

15 A. No.

16 Q. Go down to the next paragraph. "When your
17 daughter gets pregnant in the backseat of a corvette by
18 some ill-spoken Fairmont hillbilly or when your troubled
19 son kills himself because of the inner turmoil he feels,
20 I will be there to remind you that you chose this path."

21 Do you believe that was polite and respectful?

22 A. I do not believe it was impolite nor
23 disrespectful given the nature of the circumstances nor
24 the way we spoke with each other. And those were
25 legitimate concerns that I had.

1 Q. Did you --

2 A. My children have, in fact, suffered greatly.

3 Q. Did you and your wife frequently talk about
4 your troubled son killing himself?

5 A. No. We talked about our troubled son.

6 Q. Then if you'll go down to the very last
7 sentence of this email. "But I will never stop
8 reminding you of the terrible, life-altering mistake you
9 have made."

10 Was that about the divorce process or the
11 children?

12 A. Both.

13 (Deposition Exhibit No. 18 was marked for
14 identification.)

15 MR. CROOKS: Before you start asking
16 questions about our 18th exhibit, I want to take a short
17 break.

18 MR. JEFFRIES: Okay. Sounds good.

19 THE VIDEOGRAPHER: The time is 10:06. We
20 are off the record.

21 (There was a short break in the
22 proceedings.)

23 THE VIDEOGRAPHER: We are back on the
24 record. The time is 10:22.

25 BY MR. JEFFRIES:

1 Q. Mr. Ballock, before the break you were handed
2 what's been marked as Exhibit 18. I want to focus on
3 the last email down there at the bottom, Sunday,
4 December 16th, 2012, subject "Beautiful family." Do you
5 see where I am?

6 A. Yes.

7 Q. Okay. I will represent to you that this is one
8 of 45 emails that you sent to Ellen on December 16th,
9 2012. That is the December right after you two
10 separated. Most of the 45 emails were journal entries,
11 it appeared, of past Christmases.

12 A. Okay.

13 Q. I don't expect you to, you know, take my word
14 for it. But, presuming that you did send 45 emails
15 about past Christmases, why did you send so many emails
16 about past Christmases?

17 A. I don't recall that, but it makes -- I don't
18 doubt it and it makes sense because I was trying to get
19 Ellen to reconnect.

20 Q. In this email that we have here at the bottom
21 you said, "I'm not a monster. I made lots of mistakes
22 and did bad things." What bad things did you do?

23 A. I neglected Ellen.

24 (Deposition Exhibit No. 19 was marked for
25 identification.)

1 Q. All right, Mr. Ballock. Exhibit 19, a little
2 over, maybe, two-thirds of the way down the page you see
3 on January 5th, 2013, at 2:22 p.m. Ellen sent an email
4 to you. Do you see where I am? January 5th at 2:22.

5 A. Yes.

6 Q. Ellen writes is that why you had KC over all
7 the time? Who is KC?

8 A. Kimberley Compliment, a friend of ours.

9 Q. Do you know what Ellen was referring to there
10 about having Kimberlee over all the time?

11 A. Yeah. Ellen mistakenly believed that Kimberlee
12 and I had an affair. And because she believe that, she
13 pulled a knife on Kimberlee and attacked her with it.

14 Q. You did not have an affair with Ms. Compliment?

15 A. I did not. Ms. Compliment was a married woman
16 and I was very close friends with both her and her
17 husband.

18 Q. And she goes on, "Is that why you offered to
19 have McKenzie live with us while you paid for her?" Who
20 is McKenzie?

21 A. Did she write -- was that her?

22 Q. Yes. That's Ellen writing to you, "Is that why
23 you offered to have McKenzie live with us?"

24 A. I have no -- honest to goodness have no idea
25 who McKenzie is.

1 Q. Your response to this email from Ellen was,
2 "Please stop arguing with me. I'm not dredging up the
3 past with you. Your transgressions or mine." What were
4 your transgressions?

5 A. I was a bad husband. I didn't take Ellen on
6 dates. I neglected her. I put the kids over her. At
7 night, I played with the kids instead of spending time
8 with her.

9 Q. At the very top of the page, January 5th, 2013,
10 at 3:00 p.m., the third paragraph down you write, "I can
11 show you four years' worth of your email correspondence
12 with another man."

13 A. Yes.

14 Q. Who was the other man?

15 A. Oh. The other man was me.

16 Q. Why were you another man?

17 A. Because I suspected Ellen was engaged in online
18 affairs again, I posted an ad online on Craigslist
19 posing as another man. And, sure enough, she answered
20 and we began an online correspondence. She told this
21 man named Sean Matthews -- was my alias -- things that
22 she would never tell me. And that's how I learned a lot
23 about what was going on with my wife.

24 Q. Okay. So she thought that you were Sean
25 Matthews?

1 A. No. She had no idea I was Sean Matthews.

2 Q. Okay. But she thought there was a man named
3 Sean Matthews that she was responding to?

4 A. Yes.

5 Q. And did not know it was you?

6 A. Correct.

7 Q. And did I hear you say that this went on for
8 years?

9 A. Yes.

10 Q. This was a Craigslist ad; right?

11 A. Yes.

12 Q. Where she would find men to hook up with?

13 A. Correct.

14 Q. She talked to this Sean Matthews for years?

15 A. Probably two, two-and-a-half years, yes.

16 Q. And never met him?

17 A. Never met him.

18 Q. Did she ever ask to meet him?

19 A. Yes.

20 Q. What would you say?

21 A. I would say I don't want to meet you. I want
22 it to be an online relationship where we can discuss our
23 feelings and emotions and help each other out. I must
24 admit that was the most difficult part was avoiding the
25 meeting.

1 Q. Okay. And then when you talk about the four
2 years of email correspondence with Sean Matthews, you go
3 on to say, "Correspondence that shows your extreme
4 sexual side, talking about sex with dogs, horses, your
5 dad, your brother, your stepbrother, and eventually your
6 son's friends." So you weren't just talking about your
7 feelings and emotions?

8 A. No. No. Clearly. She would -- again, she
9 would share with me things that -- with Sean Matthews
10 that she wouldn't share with me. That's how I was able
11 to monitor her and keep track of her and help her. She
12 was very suicidal and she would share with him her
13 thoughts about suicide that she wouldn't share with me
14 often. And so that would -- on those days, I would stay
15 home and take care of her. And, yes, I used it as a way
16 to learn about the extent of her cheating.

17 Q. And so, how did you, as Sean Matthews, get her
18 to talk about her extreme sexual side?

19 A. Oh, Ellen's very open about her sexuality.

20 Q. Did you, as Sean Mathews, prompt her to talk
21 about her sex?

22 A. Yes.

23 Q. You would ask her to discuss fantasies and
24 things like that?

25 A. Yes.

1 Q. Did she ever find out that it was you?

2 A. She never did.

3 Q. Did you ever confront her and say, Ellen, I'm
4 Sean Matthews and these things that you're saying have
5 me worried?

6 A. No.

7 Q. Did you believe that the things she was telling
8 you, as Sean Matthews, were dangerous to your children?

9 A. Yes.

10 Q. But you still never confronted her?

11 A. Correct.

12 Q. Did you ever contact Child Protective Services
13 or whatever the equivalent agency is in the other states
14 where you were living?

15 A. I did not.

16 Q. Why, in this email here on January 5th, 2013,
17 did you mention I can show you four years' worth of
18 email correspondence talking about your extreme sexual
19 side? Were you threatening her?

20 A. No.

21 Q. Why did you mention it?

22 A. Because she would say that she did not have a
23 sex problem.

24 (Deposition Exhibit No. 20 was marked for
25 identification.)

1 Q. Exhibit 20 is a series of emails. If you go to
2 the last page, page 138, January 5th, 2013 at 3:03 p.m.,
3 Ellen wrote to you, among other things, "Stop harassing
4 me." Do you see that at the very bottom? The very
5 bottom of page 138.

6 A. Yes. Yes.

7 Q. She writes at 3:03, "Stop harassing me." And
8 I'll represent to you that if you will count between
9 that email and the end of January 5th, 2013, you sent
10 her another 16 emails. Why?

11 A. Why did I send the emails?

12 Q. Yes, after she told you to "stop harassing me"
13 at 3:03?

14 A. Again, because I was hoping to help Ellen to
15 reconnect because I wanted -- I didn't want our family
16 to dissolve. And Ellen uses -- throws around the term
17 harassment -- has our whole marriage. If I ask her to
18 put the silverware in -- the dishes in the dishwasher
19 without rinsing them off first -- to rinse them off
20 first, she would call that harassment. Kenny Ice
21 relayed to me that she would say the same things to him.

22 Q. But nevertheless, she told you to "stop
23 harassing me." I mean, you're a law enforcement
24 officer, FBI agent. Did you think it was still okay to
25 continue to send her 16 more emails?

1 A. Yes.

2 Q. About halfway down the page you'll see at
3 3:12 p.m., you tell her on the third paragraph of this
4 email at 3:12, "I want to apologize to you for all the
5 hurt I've caused." Again, what were you referring to
6 there?

7 A. The hurt that I've caused Ellen is that I was
8 disengaged.

9 Q. Let's go to the previous page. Of course, you
10 understand the way these work --

11 A. They go up.

12 Q. Yeah. They go up. So let's go to page 137.

13 A. Yeah.

14 Q. About midway down the page here is an email
15 from you to Ellen at 3:43 p.m., subject line "Sins." Do
16 you see that?

17 A. Yes.

18 Q. You say, "Truth is we have both done awful
19 things to each other. We have both sinned against each
20 other." What awful things did you do to Ellen?

21 A. I ignored her needs. I was a disengaged,
22 emotionally unattached husband.

23 Q. That's it?

24 A. That's the worst I have ever done. I treated
25 Ellen like a princess. She was spoiled. She lived a

1 fabulous life. I never harmed her physically.

2 Q. Let's turn to the next page, 136. Down at the
3 bottom at 4:45 p.m., you sent her an email, subject
4 "NYC." Do you see that?

5 A. Yes.

6 Q. You tell her, "I made hotel reservations for
7 New York," after you had told her in October that the
8 two of you were way beyond the point of any possible
9 reconciliation and she had explicitly told you in
10 November that she had no interest in reconciliation, not
11 for the remainder of your life. Why did you book a
12 hotel in New York and invite her to come with you to
13 discuss reconciliation?

14 A. Because she vacillated as well and because that
15 was one place she asked me to take her.

16 Q. When did she ask you to take her to New York?

17 A. For years.

18 (Deposition Exhibit No. 21 was marked for
19 identification.)

20 Q. Okay. Exhibit 21, at the very bottom of the
21 first page is an email from you to Ellen on
22 January 28th, 2013, at 9:58 p.m. Do you see where I am?

23 A. Yes.

24 Q. You tell her, "You are an embarrassment." And
25 then you go on to say, "People are universally horrified

1 by your actions. Horrified."

2 A. Yes.

3 Q. Do you believe that was polite and respectful?

4 A. I don't believe it was impolite or
5 disrespectful given the circumstances, given the way we
6 spoke to each other, given the things that she was
7 doing.

8 (Deposition Exhibit No. 22 was marked for
9 identification.)

10 Q. Exhibit 22, at the top of the page is an email
11 you sent Ellen on February 9th, 2013, subject line
12 "Attorney fees." It says, "Please keep separate any and
13 all attorney expenses related to our divorce and any
14 that may arise as a result of criminal prosecutions
15 and/or lawsuit filed against you and kinny for malicious
16 prosecution, abuse of process, defamation, et cetera."
17 And then in parentheses, "You can't go around falsely
18 telling people among other lies that they are being
19 investigated by the FBI."

20 A. Yes.

21 Q. You were threatening her with this very lawsuit
22 in this email, weren't you?

23 A. I wasn't threatening. I was telling her that I
24 was considering it.

25 Q. What's the difference?

1 A. It's not a threat. I have the right to do it.
2 She stole FBI property and gave it away and sold it on
3 Craigslist. She told others falsely who were speaking
4 to me about her and Kenny that the only reason I was
5 speaking to them was because I was trying to find a way
6 to arrest them. And she was spreading lies about me.

7 (Deposition Exhibit No. 23 was marked for
8 identification.)

9 Q. Mr. Ballock, Exhibit 23 is a series of text
10 messages between you and Ellen. The ones I want to talk
11 about start a little over halfway down the first page on
12 May 17th, 2013, beginning at 8:24 a.m. And I'll
13 represent to you that I counted these up and you sent
14 Ellen 61 text messages between 8:24 a.m. and 8:48 p.m.

15 At 12:02 p.m., on the second page, you text
16 Ellen, "Please call back to continue the conversation."
17 And she sent a one-word response, "No." At 12:05, you
18 texted her, "Please call back. Please hear me out.
19 This has the potential to get so much worse."

20 What did you mean by this has the potential to
21 get so much worse?

22 A. The -- what has happened. The children have
23 suffered. We've lost hundreds of thousands of dollars.
24 She had to go back to work. When I said those things
25 about regrets and about things getting worse, I was not

1 implying or suggesting that any harm would come to her
2 from me but that things would get worse and, in fact,
3 they did. They got very worse.

4 Q. About halfway down this page at 12:08 p.m., she
5 sent you a text, "I need you to stop texting me now."
6 At that point, you had sent her 23 texts. So at 12:08
7 she says, "I need you to stop texting me now," and in
8 response you texted her 12 more times in the next 12
9 minutes. Why?

10 A. I notice that this was two days after she
11 kicked me out of the house. I was very emotional and
12 very upset. Divorce is a very stressful thing. My
13 child, my son, latched himself on to me when she kicked
14 me out of the house. He climbed into the backseat and
15 refused to get out so I couldn't leave.

16 It was a very emotional time, very difficult
17 time. Anybody who has been through a divorce can
18 relate. And when you hear the rest of what I had to
19 deal with from Ellen, it will make more sense.

20 Q. Does the fact that you were going through a
21 difficult time excuse unlawful behavior?

22 A. It was not unlawful behavior.

23 Q. Generally speaking, does the fact that a person
24 is going through a difficult time excuse unlawful
25 behavior?

1 A. No.

2 Q. So you sent her 12 more texts over the next 12
3 minutes. And then at the bottom of the page, about four
4 lines up at 12:20, she again says, "Please stop texting
5 me." And if you follow along, you'll see that you
6 responded by sending three more texts over the next two
7 minutes.

8 Then again, going to the third page, at 12:22
9 and 12:23, she again texts, "Stop texting me please."
10 At 12:23, "Please leave me alone now." You then sent 23
11 more texts. So between the time that she first asked
12 you to stop texting her at 12:02 and the end of the day,
13 you sent a total of 38 text messages after she asked you
14 to stop. Why?

15 A. Because I was emotionally distraught.

16 Q. You would agree with me that you made contact
17 with her using a cell phone after she asked you to stop?

18 A. Yes.

19 Q. At 1:45, about midway down the third page, one
20 of the texts you sent her after she'd asked you
21 repeatedly to stop was, "But I see it spiraling out of
22 control. I see the cliff fast approaching for us all
23 and I want to save us."

24 A. Can you repeat that?

25 Q. Sure. 1:45 p.m., about halfway down the page.

1 You said, "And my requests to heal have not been only of
2 late. But I see it spiraling out of control. I see the
3 cliff fast approaching for us all and I want to save
4 us." What did you mean by it spiraling out of control
5 and the cliff fast approaching for us all?

6 A. The dissolving of our family.

7 Q. I mean, this was in May of 2013. You two had
8 been separated for eight months. You were in the
9 process of getting a divorce. Hadn't that already
10 occurred?

11 A. And in -- what's that?

12 Q. At this point, you had been separated for eight
13 months and were in the process of getting a divorce.
14 Hadn't the dissolving of your family already occurred?

15 A. Not in my mind. And in between, again, she
16 would say things like -- the one I remember specifically
17 was give me until December -- September, let's see where
18 we are in September.

19 Q. Can you point to me anywhere in this series of
20 text messages where she said that?

21 A. No. That was a face-to-face conversation.

22 (Deposition Exhibit No. 24 was marked for
23 identification.)

24 Q. Mr. Ballock, Exhibit 24, at the top of the page
25 you'll see an email from westcoasttwiggs@yahoo.com to

1 davedew13@gmail.com.

2 A. Yes.

3 Q. Is westcoasttwiggs, is that you?

4 A. Yes.

5 Q. And is davedew13 Kenny Ice?

6 A. Kenny Ice, Jr.

7 Q. Correct. If you go on down it says, "Begin
8 forwarded message." It appears to me that you were
9 forwarding to Kenny an earlier email from
10 aalab.training@yahoo.com that was sent October 20th,
11 2012, to westcoasttwiggs@yahoo.com. Do you see that?

12 A. Yes.

13 Q. What was the aalab.training@yahoo.com email?

14 A. That is an email address -- Ellen's email
15 address under which she communicated with Sean Matthews.

16 Q. Okay. So, this was sent October 20th, 2012.
17 At that point, was she still communicating with Sean
18 Matthews?

19 A. That was sent -- that was sent from the aalab
20 account to westcoasttwiggs' account; right? Do you see
21 that.

22 Q. Yes.

23 A. Yes. No, she was not.

24 Q. Okay. So how did an email from her yahoo
25 account, aalab.training, get sent to you on

1 October 20th, 2012, a month after you separated?

2 A. I sent it to myself.

3 Q. How did you get access to her email account?

4 A. It was our shared email account, I should say.
5 She created it. It was our shared email account.

6 Q. What do you mean it was shared?

7 A. That's how she -- that's how she communicated
8 with Sean Matthews, back and forth on that account.

9 Q. Okay. So you forwarded this to yourself on
10 October 20th after you separated?

11 A. To save it.

12 Q. Going back up to the top of the page on
13 July 13th, 2013. You forwarded this email to Kenny Ice.
14 And just put it in context. I don't think we need to
15 read it into the record, but if you go through these
16 pages and the emails that were forwarded talking about
17 some of her sexual activities. On the first page she's
18 talking about Gary. Who is Gary?

19 A. That is her stepbrother.

20 Q. And you tell Kenny, "When this is all over I
21 plan to share these with her family so they can protect
22 themselves and hopefully pressure her to get help."
23 Were you threatening to blackmail her with these?

24 A. No. It wasn't a threat. I wanted -- and all
25 throughout our marriage -- wanted her to get help. She

1 saw numerous counselors, took different medications, and
2 I couldn't get her to stop her dangerous sexual
3 behaviors. And I had hoped to enlist the help of her
4 family. Kenny and I were having discussions at that
5 time about how to help her, how to get her to stop
6 because he saw it as well.

7 Q. When were these emails originally sent from
8 Ellen to Sean Matthews?

9 A. It would have been before 2011.

10 Q. So, if you were concerned then, why didn't you
11 share them with her family at the time?

12 A. Because I thought I could do it and because I
13 didn't want to embarrass her and because she promised to
14 get help. She promised to stay on her meds. I did, in
15 fact, reach out to her father via telephone on one
16 occasion and shared with him my concerns.

17 She -- the other reason I was going to do that
18 was to protect them from that one of Ellen's fantasies
19 that she wrote to Sean Matthews actually -- one of her
20 fantasies was that her dad would find himself in the
21 hospital and that that's when he would finally be able
22 to have sex with her without his permission. So I
23 wanted to protect him.

24 Q. But you wanted to wait until the divorce was
25 over to protect him?

1 A. No. Again, I reached out to him before.

2 Q. And told him that his daughter was having
3 fantasies about having sex with him?

4 A. No. At that time I told him that she was out
5 of control sexually, having sex in public places, that
6 sort of thing.

7 Q. Okay. When I asked you just a little bit ago
8 why you didn't bring these to her family's attention at
9 the time back in before 2011 when they were originally
10 sent you said you thought you could do it and you wanted
11 to help her.

12 A. And I was able to. I was able to moderate her
13 behaviors. I was able to monitor. I was able to
14 persuade her to continue with counseling or get back
15 into counseling. I was able to persuade her to take her
16 medicines. And when she left, that's when I became
17 incredibly concerned for my children's welfare and for
18 hers, quite frankly.

19 Q. Did you call CPS about your children's welfare?

20 A. No.

21 Q. So by July 13th, 2013, when you were forwarding
22 this to Kenny Ice, did you still believe you could take
23 care of it?

24 A. No.

25 Q. So if you were concerned about her family and

1 their need to protect themselves, why were you going to
2 wait until this was all over? First, let me back --

3 A. I didn't say that I was going to wait until --

4 Q. I'm sorry. I'd like to clarify my question if
5 I could. When you say this is all over, what were you
6 referring to?

7 A. I don't know. I don't know. I guess the
8 divorce. I don't know.

9 Q. So -- and now the original question I asked.
10 Why would you wait until the divorce was all over to
11 protect them?

12 A. Because I -- I don't know why. I don't know
13 why.

14 Q. Let's go back to --

15 A. I guess because I still had hope.

16 Q. Let's go to the fourth page here. Down at the
17 bottom there's an email from westcoasttwiggs to
18 davedew13, that is from you to Kenny.

19 A. Yeah.

20 Q. Dated July 21st, 2013?

21 A. Uh-huh.

22 Q. "She will not be able to become a nurse when
23 the licensing board learns about her problem with sex
24 and violence and abusing prescription drugs." Were you
25 going to inform the nursing board if she tried to get a

1 job as a nurse?

2 A. Yes.

3 (Deposition Exhibit No. 25 was marked for
4 identification.)

5 Q. Mr. Ballock, I've handed you what's been marked
6 as Exhibit 25. Just for clarification, you see at the
7 top the email address is written over "Expunged."

8 A. Okay.

9 Q. So I'll represent to you that I couldn't find
10 this elsewhere in our file, but I got it from the state
11 police investigation which, per your request was
12 expunged so they whited out your name. But I'll
13 represent to you that I believe this to be, where it
14 says "Expunged," to say from ScottBallock@yahoo.com. Do
15 you recall sending this email dated April 26th, 2013?

16 A. I don't recall it, but I have no reason to
17 believe it wasn't me.

18 Q. Okay. So let's go to the next page. It looks
19 like what you did was forward her a photograph. And I
20 understand the photograph to be a screenshot that you'll
21 see down at the bottom right-hand corner Troopers 36.
22 Do you see where that is?

23 A. Yes.

24 Q. So this is a screenshot of an email from Ashlee
25 Leeson to Chris Elliss of an email dated June 9th, 2012.

1 Do you see that?

2 A. Yes.

3 Q. Who is Ashlee Leeson?

4 A. That was her online alias that she used to meet
5 men.

6 Q. How did you get access to that email?

7 A. I have no idea how I would have gotten access
8 to that email.

9 Q. You said earlier --

10 A. Maybe -- maybe -- Scott gave it to me. I don't
11 know.

12 Q. Scott?

13 A. Scott is Chris Elliss. I investigated and
14 learned that Chris Elliss was actually a guy by the name
15 of Scott Kirby. He used that alias, so he may have
16 given this to me. I don't remember.

17 Q. You testified earlier this morning that you
18 watched some of the videos of Ellen having sex with
19 other men?

20 A. Yes.

21 Q. How did you get those videos?

22 A. I found them.

23 Q. Where did you find them?

24 A. She had them hidden.

25 Q. Where did she have them hidden?

1 A. In a cabinet in the living room that we don't
2 use.

3 Q. Did she know you were watching them?

4 A. No.

5 Q. Did she ever become aware you were watching
6 them?

7 A. Yeah.

8 Q. When did she become aware?

9 A. I don't remember when exactly.

10 Q. Was it before or after the two of you
11 separated?

12 A. Oh, before.

13 (Deposition Exhibit No. 26 was marked for
14 identification.)

15 Q. Mr. Ballock, I've handed you Exhibit 26. This
16 is an email from you to Ellen dated May 3rd, 2013. If
17 you go to the third paragraph of that email, about
18 halfway through the paragraph, again, you're pleading
19 with her to reconcile and you state, "We can implode our
20 lives." And then in parentheses, "My attorney doesn't
21 pull punches. And after I shared with her what I need
22 to disclose now to defend myself against your claims she
23 said there is a very real risk we may both lose the
24 children."

25 What did you share with your attorney that made

1 her fear you could lose custody of your children?

2 A. Ellen's sexual behaviors.

3 Q. How could that cause you to lose custody? You
4 said that you may both lose custody?

5 A. Because I didn't go to CPS. I didn't think
6 that Ellen's sexual behaviors with other men was a
7 threat to the children.

8 (Deposition Exhibit No. 27 was marked for
9 identification.)

10 Q. Mr. Ballock, I've handed you Exhibit 27.
11 Again, this came from the state police file so your name
12 has been expunged, but I believe you've seen this letter
13 before, haven't you?

14 A. Yes.

15 Q. Did you receive this letter -- just for the
16 record let me put it in context for the record. This
17 Exhibit 27 is a letter dated May 3rd, 2013, from Ellen's
18 divorce attorney Matthew Stout to you directing you to
19 send all inquiries or communications not directly
20 necessary for the care of the children through the
21 attorney's office. Did you receive this letter from
22 Mr. Stout?

23 A. I did not, the same way I did not receive the
24 letter sent to me from Judge Alois's office. I didn't
25 receive this. I wish I had.

1 Q. Which letter from Judge Alois's office?

2 A. I don't know what it was, but he mentioned in
3 his ruling, I believe, that something he sent to me came
4 returned as undeliverable.

5 Q. You don't recall what it was?

6 A. No, I don't recall what it was.

7 Q. Was this when you were pro se?

8 A. Yes.

9 (Deposition Exhibit No. 28 was marked for
10 identification.)

11 Q. Mr. Ballock, Exhibit 28 is an email exchange
12 between you and Ellen on May 15th, 2013. At the bottom
13 of the first page you'll see in response to a request
14 from you to take Summer to Disney World, she had stated,
15 "Email should be fine enough for communicating, but your
16 one-day deadlines and requests for me to respond only if
17 I object lead me to believe you may need to go through
18 my attorney's office in the future."

19 Then you respond on the fourth paragraph of
20 your response, "I will not go through your attorneys for
21 anything ever."

22 A. Uh-huh.

23 Q. At this point, this was May 15th, 2013, Ellen
24 has repeatedly told you, as we've discussed this
25 morning, to stop harassing her, to stop emailing her,

1 and now to direct communications through her attorney's
2 office, but you would not honor her request; correct?

3 A. Correct.

4 Q. Why not?

5 A. For one thing, Ellen was racing through our
6 money. She, at one point, showed up at a family court
7 hearing with three attorneys in tow, which I was paying
8 for. And I found it very difficult to have to talk to a
9 third party rather than talking to Ellen about simple
10 plans for drop-offs or vacations and have to pay
11 outrageous sums of money just to do that.

12 Q. Do you recall us discussing earlier this
13 morning another email that you had sent to Ellen saying
14 don't communicate with me anymore, go through the
15 attorneys for everything including arranging pickup and
16 visiting children?

17 A. Yeah.

18 Q. At that time, you thought that was reasonable
19 option?

20 A. Yeah.

21 Q. But here you didn't. What was the difference?

22 A. We were getting drained financially.

23 Q. So because you were being drained financially
24 you didn't have to honor her request to go through her
25 attorneys?

1 A. I didn't want to. If she wanted to talk to me
2 she should be able to talk to me about simple matters
3 like drop-offs.

4 Q. On the second paragraph of your response here
5 you said, "You haven't wanted to talk to me for eight
6 months now." Now you've testified repeatedly that she
7 would communicate with you and say she was interested in
8 reconciliation, but here you're saying that she had not
9 wanted to talk to you for eight months now. Which is
10 it?

11 A. She didn't want to sit down and talk about
12 reconciliation. It was always just short, brief
13 conversations. It was her showing up to yell at me. I
14 wanted to have a sit-down conversation with her, and she
15 wouldn't do that with me.

16 Q. And you wouldn't honor her request to not talk
17 about reconciliation?

18 A. I kept asking her.

19 Q. You go on in this second paragraph, "It is
20 going to be a very long and ugly eight years for all of
21 us." Now, where did the figure eight years come from?

22 A. For how long we would have to be in
23 communication with each other because of the children
24 until Summer turned 18.

25 Q. Were you threatening her by saying it's going

1 to be a very long and ugly eight years?

2 A. No. Quite honestly, I was referring to her
3 behaviors.

4 Q. On the bottom of this -- of your response you
5 tell Ellen, "It is your privilege to continue to ignore
6 me, even if it negatively impacts the children just as
7 it was your privilege to break up the family for a man
8 you met on Craigslist and ruin our young children's
9 lives. It is your privilege to lie about me and try to
10 hurt me. It has always been about you and your
11 privileges. For 26 years it is about you and your
12 privileges. It is also your privilege to pay your
13 attorneys with your own money. I will not waste my
14 hard-earned money in that manner. When you actually
15 work for your money you will finally understand the
16 value of it."

17 Do you believe that was polite and respectful?

18 A. I do not believe that was impolite nor
19 disrespectful given the circumstances, given our
20 history, not at all.

21 Q. Okay.

22 (Deposition Exhibit No. 29 was marked for
23 identification.)

24 MR. WILLIAMS: Excuse me. We can go off
25 the record just for a brief moment.

1 THE VIDEOGRAPHER: The time is 11:00. We
2 are off the record.

3 (There was a short break in the
4 proceedings.)

5 THE VIDEOGRAPHER: We are back on the
6 record. The time is 11:01.

7 (Deposition Exhibit No. 29 was marked for
8 identification.)

9 Q. Mr. Ballock, during the break you were handed
10 what's been marked as Exhibit 29. I believe you
11 testified about this earlier. I'd like to ask about it.

12 This is a May 28th, 2013, email from you to
13 Ellen, subject "Theft of government property." In this
14 email, just to kind of sum it up, you accuse Ellen of
15 removing joint funds and assets and stealing some
16 government-issued property. Would that be a fair
17 characterization?

18 A. Yes.

19 Q. Why didn't you address this issue between your
20 attorneys and hers?

21 A. Between my attorneys and hers?

22 Q. Yes. Particularly, the removal of joint funds
23 and assets.

24 A. I did.

25 Q. But you also went directly to her as well?

1 A. Yes.

2 Q. You accused Ellen of stealing government
3 property and you say, "Theft of government property is a
4 matter we will be addressing immediately." And then you
5 copy 18 U.S.C. Section 641?

6 A. Yes.

7 Q. You were threatening her with criminal charges,
8 weren't you?

9 A. No. I was telling her what she was at risk of.
10 I did not want to see my children's mother -- I didn't
11 want my children to see their mother going to jail.

12 Q. Okay. Given this contentious, bitter divorce
13 that you've described and your accusations that she
14 repeatedly lies, why didn't you just report the theft of
15 FBI property to the FBI and let them deal with it?

16 A. I did report it to the FBI immediately.

17 Q. But also went directly to Ellen?

18 A. Yes.

19 Q. Isn't it true though that the property you're
20 describing here is stuff that you had left at the house
21 when you moved out?

22 A. Yes, under lock and key. In fact, one of your
23 colleagues who was previously the criminal division AUSA
24 for Pittsburgh wanted to prosecute Ellen for this.

25 Q. Who was that?

1 A. I forget her name. She was the criminal
2 division chief in the AUSA's office up in Pittsburgh.
3 She's now with you. She said she couldn't represent me
4 on this matter because you guys represent West Virginia
5 State Police. If you said her name, I would know it.
6 Morgan -- Shawn Morgan. Shawn Morgan wanted to
7 prosecute it.

8 Q. So you had left this property at the house, as
9 you say under lock and key?

10 A. Yeah. It was under a constructive trust.
11 She'd been directed not to remove or dispose of any
12 household items.

13 Q. Did you ever try to -- before May 28th, 2013,
14 ever try to get the FBI property out of the house?

15 A. No. I had what I needed at my apartment. And
16 I assumed that because some of it was under lock and key
17 and because it was FBI property, she wouldn't mess with
18 it. I left a lot of my other possessions there as well.
19 I was in a small apartment and only took a few things.

20 Q. Do you recall an incident on November 5th,
21 2012, when you were at the house and Ellen called the
22 police?

23 A. Yes.

24 Q. Were you trying to get property then?

25 A. I was trying -- what was I trying to get? I

1 was trying to get suits. I was trying to get suits.

2 MR. CROOKS: What was the date you
3 referenced, Mark?

4 MR. JEFFRIES: November 5th, 2012.

5 A. Actually, I wasn't trying to get suits.
6 Actually, she called me and said come to the house.
7 Tommy wants -- is misbehaving and he's asking to see
8 you. And so I think it would be best for him to go with
9 you tonight.

10 So I went to the house and I stood at the front
11 door, even though the house was still in my name and I
12 was still making payments and I had every right to be
13 there, I stood outside the front door. And it was a
14 cold evening. And so -- and she said since you're here,
15 why don't you take your suits and I'll go get them.

16 And when she did, I stepped inside -- one step
17 inside the front door because it was cold outside,
18 because the kids were coming up to see me, because the
19 dog was there. And she came around the corner and
20 flipped her lid. She went nuts. "What are you doing in
21 my house? Get the fuck out of my house." And then she
22 called the police.

23 Q. So you were not there to pick up the FBI
24 property on November 5th, 2012?

25 A. No, I saw no reason to. I assumed it was safe.

1 Q. If you'll refer to Exhibit 1, that's the
2 timeline that you prepared.

3 A. Yeah.

4 Q. I told you we were going to come back to it.
5 If you'll look on the entry for 5/26/2013. It's on
6 page 9.

7 A. Yes.

8 Q. The second paragraph of this entry says, "Per
9 his employer's request, Scott asks Ellen via text
10 message to return what remains of the FBI property."
11 Who told you to contact Ellen about returning the FBI
12 property?

13 A. I can't remember her name, but she was an
14 employee of the security division, the division to which
15 I reported the theft.

16 MR. JEFFRIES: We've been going another
17 hour. Do you want to take a break, Charles?

18 MR. CROOKS: What time is it?

19 MR. JEFFRIES: I'm at a good stopping
20 point here. It's 11:07.

21 MR. CROOKS: Do you want to take a break
22 for lunch or what are you thinking?

23 MR. JEFFRIES: Let's go off the record.

24 THE VIDEOGRAPHER: The time is 11:07. We
25 are off the record.

1 (There was a short break in the
2 proceedings.)

3 THE VIDEOGRAPHER: We are back on the
4 record. The time is 11:26.

5 BY MR. JEFFRIES:

6 Q. Mr. Ballock, I understand that you were
7 arrested on September 13th, 2013, during a break in the
8 family court proceedings in the divorce?

9 A. I was.

10 Q. Had Judge Minor informed you that you were
11 going to be arrested --

12 A. He did.

13 Q. -- earlier in the proceeding?

14 A. At the start of the proceedings.

15 Q. So about what time were you arrested?

16 A. Late morning.

17 Q. Before lunchtime, would you say?

18 A. Yeah, around lunchtime.

19 Q. Was it a regularly scheduled break in the
20 hearing in family court?

21 A. Yes.

22 Q. Who arrested you?

23 A. Mike Kief.

24 Q. Anyone else?

25 A. I was told that there were other troopers

1 there, but I didn't notice them.

2 Q. You didn't see any other troopers?

3 A. Yeah. I didn't notice them.

4 Q. Who told you there were other troopers there?

5 A. Delby Pool, my attorney.

6 Q. Okay. So you were arrested. Were you put in
7 handcuffs?

8 A. No.

9 Q. Am I correct that you were taken up from family
10 court to the magistrate court for arraignment?

11 A. Correct.

12 Q. Then what happened?

13 A. The magistrate released me on a PR bond.

14 Q. And you went back to the family court hearing?

15 A. Yes.

16 Q. How long did this total process take from the
17 time that you left the family court until the time you
18 came back?

19 A. 15 or 20 minutes. It was brief.

20 Q. When you were in the magistrate court getting
21 arraigned was there anyone else there?

22 A. My attorney, Mike Benninger.

23 Q. I thought you just said that Delby Pool was
24 your attorney?

25 A. Yeah, but I called Benninger to let him know

1 what was going on, so he was with me -- was he with me
2 at the magistrate hearing?

3 Q. I don't know. I wasn't there.

4 A. I had attorney representation. Delby is not a
5 criminal attorney. My memory is fuzzy on that fact. I
6 think Benninger was there. I don't recall. But I had
7 attorney representation.

8 Q. Was there anyone not involved in the case
9 present there in the magistrate hallway or not in the
10 courtroom but there outside the courtroom?

11 A. There were other people in the hallway.

12 Q. Did you know any of them?

13 A. Not that I remember. I was pretty focused on
14 what was going on.

15 Q. Now, in Paragraph 33 of the current version of
16 the complaint you allege that my clients intentionally
17 ignored policies, procedures, and the constitutional
18 rights of Ballock by arresting you at family court on
19 the day of the hearing. What policies and procedures do
20 you believe they violated?

21 A. I believe that they purposely arrested me at
22 family court to influence the family court's decision.
23 Judge Minor, in fact, said that in his ruling, that this
24 was clearly done in an attempt to influence his
25 decision.

1 Q. But --

2 A. I was -- it was a nonviolent misdemeanor for
3 which I was never interviewed. I have no history of
4 violence. Normally, a summons would be issued for that
5 sort of thing, but they had to make a show at family
6 court.

7 Q. Okay. I appreciate all that, but my question
8 was what policies or procedures do you believe they
9 violated by arresting you at family court on the day of
10 the hearing?

11 A. By not issuing a summons instead of arresting
12 me.

13 Q. Do you believe that there's a state police
14 policy or procedure that requires that they issue a
15 summons?

16 A. Yes.

17 Q. You don't know the number or name of the
18 policy?

19 A. No.

20 Q. What constitutional rights did they violate by
21 arresting you at family court on the day of the hearing?

22 A. I hadn't committed any crime.

23 Q. So which constitutional right would that be?

24 A. I can't answer that. I don't...

25 Q. In Paragraph 48 of the third amended complaint,

1 you allege my clients knowingly violated policies and
2 procedures and your constitutional rights in relying on
3 information they knew was false, unsubstantiated, and
4 intended to abuse the process and initiate a malicious
5 prosecution. Again, my question is what policies and
6 procedures did they violate by relying on the
7 information that they received from Ms. Costlow?

8 A. Their policy manual states that they should
9 interview everybody that they can including the suspect,
10 and they didn't. Their policy manual requires that they
11 document everything, and they didn't. Their policy
12 manual requires that they take special care and
13 consideration when investigating someone like a
14 politician or another law enforcement officer, and they
15 didn't.

16 Q. Anything else that they violated in their
17 policies and procedures?

18 A. Not that I can think of off the top of my head.

19 Q. What constitutional rights did they violate by
20 relying on information that was provided to them by
21 Ms. Costlow?

22 A. I can't say.

23 MR. CROOKS: What was the paragraph of the
24 complaint to which you referred there in your question?

25 MR. JEFFRIES: Paragraph 48.

1 MR. CROOKS: Thank you.

2 BY MR. JEFFRIES:

3 Q. You allege that the information they had was
4 unsubstantiated, but Ellen's allegations were
5 substantiated, weren't they, by the emails and text
6 messages she provided; correct?

7 A. No. Ellen also told them that I was physically
8 violent towards her. That's unsubstantiated.

9 MR. JEFFRIES: Let's go off the record for
10 a second.

11 THE VIDEOGRAPHER: The time is 11:33. We
12 are off the record.

13 (There was a short break in the
14 proceedings.)

15 THE VIDEOGRAPHER: We are back on the
16 record. The time is 11:35.

17 BY MR. JEFFRIES:

18 Q. Mr. Ballock, I apologize for the interruption.
19 To kind of get us back on track I had asked there's an
20 allegation in the complaint that my clients relied on
21 information that they knew was unsubstantiated and I
22 asked what information was unsubstantiated when
23 Ms. Costlow had provided emails and texts. And the
24 answer that you were giving was that they -- she also
25 mentioned physical abuse. Is there anything else that

1 was unsubstantiated?

2 A. Well, because they didn't speak to me, because
3 they didn't interview me, even though I offered to be
4 interviewed, they didn't get to hear that between all of
5 these correspondences that she would reach out to me.

6 Q. You said that you believe they violated the
7 policy manual which requires them to interview everyone,
8 including the suspect. Do you know the number or the
9 name of the policy that you're --

10 A. I don't. It's in the policy manual that you
11 provided us during discovery.

12 Q. What information did Ellen provide to the state
13 police that was false?

14 A. That I was abusive.

15 Q. Anything else?

16 A. I would have to refresh my memory by looking at
17 it.

18 Q. That's all you can recall right now off the top
19 of your head?

20 A. Correct.

21 Q. Why do you think that Corporal Gaskins and
22 Sergeant Kief knew that this information was false?

23 A. Because I believe that for some reason they had
24 a personal vested interest in assisting Ellen.

25 Q. Why do you believe that?

1 A. Because of email correspondence between Kief
2 and Ellen and because of some circumstantial evidence
3 against Berry and because Kenny Ice told me that --
4 Kenny Ice, Jr., told me that Berry was having a sexual
5 relationship with Ellen.

6 Q. I'll go to the allegations about Trooper Berry
7 and Kenny Ice later, but what email or emails between
8 Sergeant Kief or now Lieutenant Kief and Ellen led you
9 to believe that the troopers had a vested interest in
10 assisting her?

11 A. For one, before my misdemeanor trial, I
12 approached the family court and asked for the unsealing
13 of Christi Cooper-Lehki's report and testimony for use
14 in my defense. Gabrielle Mucciola, I believe her name
15 is, assistant prosecutor showed up and represented Ellen
16 at that hearing and argued against its release.

17 The judge ultimately decided that he wasn't
18 going to release it based upon her comments and because
19 he thought it would be too embarrassing to Ellen. In
20 emails between Kief and Ellen, Kief writes Ellen
21 something to the effect of -- 'cause Ellen, obviously,
22 had shared with him this information. And Kief writes
23 to Ellen, "Wow. That's fantastic. That's great. I bet
24 Scott was humiliated and walked out of the courtroom
25 with his tail between his legs." So Kief, who is

1 supposed to be an unbiased law enforcement officer who
2 represents citizens as a whole, not just one person, was
3 taking sides with the complainant and very
4 unprofessionally and improperly communicating with her
5 on his official government account about how happy he
6 was that I was humiliated and how happy he was that
7 potentially exculpatory evidence was going to be kept
8 out of my case.

9 Q. Just so I'm clear. In the email from Kief to
10 Ellen he was describing the hearing where Gabe Mucciola
11 argues against releasing the Cooper-Lehki report?

12 A. Yeah. That was what he was referring to, I bet
13 Scott walked out of that courtroom with his tail between
14 his legs. That's great news. I bet he was humiliated.

15 Q. That was Ellen saying those --

16 A. No. That was your Sergeant Kief saying those
17 statements, a law enforcement officer saying those
18 statements.

19 Q. But you testified earlier --

20 A. So he wasn't just -- so he wasn't just
21 concerned about the law or justice prevailing. He was
22 concerned and happy that someone was being humiliated
23 and that someone would not be able to use exculpatory
24 information to their benefit.

25 Q. Where did you get that email? Was that

1 produced in discovery?

2 A. From you. From you. You surely read it.

3 Q. Anything else that you -- leads you to believe
4 that the troopers had a vested interest in assisting
5 Ellen?

6 A. Yes. Well, at the dismissal at which Sergeant
7 Kief at the time was there, Judge Mullins said that
8 Ellen shall not provide any disparaging information to
9 my employer. That was a condition. Ellen shall not
10 provide any disparaging information to my employer.
11 That was also a condition of divorce court.

12 Judge Minor said you shall not have any contact
13 with Scott's employer. Any contact. So now, two
14 different judges have told Ellen you shall not interfere
15 with Scott's employment.

16 One week after that dismissal at which Sergeant
17 Kief attended and I have reason to believe probably
18 helped craft that wording, Sergeant Kief contacted Ellen
19 and invited her -- the FBI at the time was going to
20 investigate me due to the internal administrative
21 inquiry. And Sergeant Kief knew that Ellen wasn't
22 allowed to talk to the FBI. He knew it. He was there.
23 He heard the judge's instructions. He's a law
24 enforcement officer. And he wrote -- he contacted Ellen
25 and said the FBI is coming to talk to me, hey, let's get

1 around that, you tell me what you want me to tell the
2 FBI.

3 Ostensibly, the investigation -- the FBI's
4 investigation -- that was a week later. Ostensibly, the
5 FBI's investigation was to have been about these emails.
6 That's it. But Sergeant Kief told Ellen let's broaden
7 the scope, let me know if you know any way that he has
8 abused his power.

9 So Sergeant Kief is messing with my job. He
10 wants me fired. He doesn't want to administer justice.
11 He doesn't want to just do what's right. He doesn't
12 want to be a neutral and impartial law enforcement
13 officer. He wants to screw me, and I don't know why.

14 Q. I'd like to break down what you just said a
15 little bit. You said that you have reason to believe
16 that Sergeant Kief helped craft the language in the
17 dismissal agreement that your wife shall not provide
18 disparaging information to your employer; is that
19 correct?

20 A. I wouldn't be surprised if he did. He was part
21 of that is my understanding. But he was -- in any
22 event, he was at the hearing where that was agreed upon.
23 He was sitting with Ellen.

24 Q. All right. You testified you have reason to
25 believe that he helped craft it. Why do you have reason

1 to believe that?

2 A. My attorney.

3 Q. What did your attorney tell you?

4 A. That he worked with the prosecutor's office who
5 was working with the state police in crafting that
6 agreement.

7 Q. And your attorney being Mike Benninger?

8 A. Yeah. My attorney was Mike Benninger.

9 Q. So Mike told you that Sergeant Kief worked with
10 the prosecuting attorney to craft this language?

11 A. Yes.

12 Q. Okay.

13 A. He somehow had very close relations with the
14 prosecutor's office. And he shared with me things that
15 were going on. He said that --

16 Q. Let me interrupt just for a second.

17 A. I'm finishing that question.

18 Q. I'm not clear. You said he had close relations
19 with the prosecutor's office --

20 A. Yes.

21 Q. You're talking --

22 A. Benninger. I'm sorry. Benninger.

23 Q. Okay. Go ahead and finish.

24 A. So he knew a lot that was going on. So,
25 another reason that I believe he -- that I believe he

1 was being unprofessional is, again, this dismissal
2 agreement. One of the conditions is that I was supposed
3 to encourage my father to take down his website.

4 The email correspondence between Kief and Ellen
5 which you provided me during discovery shows that Kief
6 was actively trying to arrest me for violating that
7 agreement. He -- Ellen was encouraging him to. She was
8 asking him where he was in his investigation. She was
9 giving him investigative advice. She was asking him if
10 he was keeping records, things of that nature. So he
11 clearly knew about the conditions because he was trying
12 to bust me for one of them, but he was helping Ellen
13 violate it.

14 Mike Benninger also told me -- he called me one
15 day and he said, hey, make sure -- I know you -- I know
16 you have nothing to do with your father's website, but
17 you better make sure you don't because Kief is upset
18 that he didn't get you. He's coming after you. West
19 Virginia State Police have employed a forensic --
20 computer forensics expert. They are going -- the are
21 going gangbuster for you. He wants to get you. And I
22 was unfazed and unconcerned because I had no connection
23 to my father's website.

24 Mike Kief -- and I've never heard of this in
25 law enforcement. Mike Kief reached out to someone at a

1 school board and someone -- a school principal on
2 Ellen's behalf to be a character reference for her. I
3 have never heard of a law enforcement officer doing that
4 for a complainant. It's highly unprofessional and
5 smacks me of improper relationship between Kief and
6 Ellen.

7 Chris Berry was allegedly having a sexual
8 relationship with Ellen. I wouldn't be surprised if
9 Mike Kief was having a sexual relationship with Ellen or
10 had. I don't know why he was taking sides in an
11 investigation.

12 Q. You said you wouldn't be surprised if
13 Lieutenant Kief was having sex with Ellen. Do you have
14 any evidence that he was?

15 A. I don't.

16 Q. Did I understand you correctly that emails that
17 you saw indicated that Sergeant Kief was actively trying
18 to have you arrested for your father violating the terms
19 of the agreement by posting the website?

20 A. That he was investigating it, yes, in the
21 emails you provided me. And we are still coming up with
22 search terms so that we can search additional emails. I
23 don't believe that we've received -- it's my belief that
24 we haven't received everything.

25 Q. Why do you believe that?

1 A. Because in one of the emails Ellen says to
2 Kief, call or write me any time. And it just appears
3 they have a very close relationship, an unprofessionally
4 close relationship between a trooper and complainant.
5 And it's just my belief.

6 Q. Okay. Just because you believe that the
7 relationship is too close?

8 A. Yes.

9 Q. No physical evidence? You haven't seen any
10 emails like from Ellen's side that would lead you to
11 believe --

12 A. No.

13 Q. You said that the scope of the FBI
14 investigation was originally just about the emails that
15 you sent Ellen and that Sergeant Kief tried to expand it
16 to any way that you had abused your power. Do you have
17 any reason to believe that Sergeant Kief knew what the
18 scope of the FBI investigation was?

19 A. I suspect as is protocol that the agent would
20 have told Kief why he was interviewing him for me.

21 Q. But you don't know that for certain?

22 A. No. There is also a -- there was an event
23 where a West Virginia State Trooper, after I filed my
24 criminal complaint approached an FBI agent in Clarksburg
25 and told the FBI agent that he was upset about the

1 lawsuit and that it was going to hurt relations between
2 the FBI and state troopers. And I wouldn't be surprised
3 -- I don't have any information to believe that he
4 wasn't sent there by Kief.

5 Q. We'll get to that allegation in a little bit.
6 I'll let you tell your story there.

7 A. Okay.

8 Q. You filed the original complaint in this matter
9 and the first amended complaint pro se; correct?

10 A. Correct.

11 Q. Did you draft them yourself?

12 A. I did.

13 Q. Did anyone assist you?

14 A. No.

15 Q. Now, after you were arraigned at magistrate
16 court, you said that you returned back to family court
17 to continue the hearing there; correct?

18 A. Yes.

19 Q. Okay. Going back to the day of your arrest.
20 Sorry. We got kind of diverted there for a bit.

21 A. Yes.

22 Q. After family court was over you reported to the
23 Morgantown state police detachment for processing;
24 correct?

25 A. Right. Which is interesting because they said

1 that the reason that they did it -- made the arrest at
2 family court was because they were afraid I was armed
3 and might hurt somebody. But I walked into that
4 detachment with my firearm and had it on me the whole
5 time. They weren't concerned about that. That was just
6 pretense.

7 Q. Was Sergeant Kief there when you were
8 processed?

9 A. I don't know.

10 Q. Did you see him?

11 A. I did not.

12 Q. How about Corporal Gaskins? Was he there?

13 A. I didn't know what Corporal Gaskins looked like
14 at the time.

15 Q. Did you identify yourself as an FBI agent when
16 you came into the detachment?

17 A. I didn't have to. They knew who I was. They
18 were expecting me.

19 Q. Who was?

20 A. This kid named Schlobeim (ph).

21 Q. Named what?

22 A. It was a kid named Schlobeim, a trooper.

23 Q. Schlobeim?

24 A. Yeah.

25 Q. You wouldn't happen to know how to spell that,

1 would you?

2 A. S-c-h-l-o-b maybe e-i-m or e-a-h-m, Schlobeim.

3 Q. Had you worked with him before?

4 A. Never met him in my life.

5 Q. But he knew who you were?

6 A. Oh, yeah. They were very professional and
7 very, very good.

8 Q. Was your gun visible?

9 A. No.

10 Q. Let's go back to your timeline for a second.

11 Go to --

12 A. But had they been concerned about the gun as
13 they would be an offender or any other citizen, they
14 would have patted me down. They weren't concerned about
15 that. It was all pretense.

16 Q. Do you believe that they pat down every citizen
17 that comes into the state police detachment?

18 A. No, but I believe they would pat down citizens
19 who they previously said they were afraid would use
20 their gun on them.

21 Q. On page 12 of your timeline --

22 A. Yeah.

23 Q. The very bottom, your entry for September 2nd,
24 2013.

25 A. Yeah.

1 Q. It says at the very end of this page and
2 continuing on to the next one, "Scott offers to waive
3 his constitutional right against self-incrimination and
4 be interviewed by the prosecutor's office and West
5 Virginia State Police. Both declined the offer. When
6 did you learn that you were under investigation?

7 A. Can you direct me?

8 Q. Sure.

9 A. Page --

10 Q. Bottom of page 12, the very end of it.

11 A. My bottom of page 12 -- oh. My bottom begins
12 with September 2nd, Corporal Gaskins.

13 Q. Right. And at the very last -- end of that
14 sentence, Scott offers to waive his constitutional
15 rights. Do you see where I am now?

16 A. Yeah.

17 Q. Okay. When did you learn that you were under
18 investigation?

19 A. The day I was arrested.

20 Q. So you did not know on September 2nd, 2013 that
21 you were -- you obviously couldn't, if you didn't know
22 you were under investigation, could not have offered on
23 September 2nd?

24 A. No, so that's an error. That's a good catch.

25 Q. When did you offer to waive your Fifth

1 Amendment rights and give a statement?

2 A. Immediately. I told my attorney I want to talk
3 to them. They need to hear my side of the story.

4 Q. On the day of the arrest?

5 A. Yeah.

6 Q. Did your attorney advise you to give a
7 statement or to exercise your right?

8 A. No. He said I will reach out to prosecutors
9 and West Virginia State Police.

10 Q. Now, on the day of the arrest, you -- if I
11 recall correctly, you're not sure who your attorney was
12 at that time, whether it was Mike or --

13 A. My memory is vague. That was a pretty
14 traumatic experience. I -- there was another agent
15 there not representing me but just to see what was --
16 just to be there for my safety.

17 Q. So there was another agent there at magistrate
18 court?

19 A. Yeah.

20 Q. Who was that.

21 A. Not in magistrate court, but when Kief met me.
22 I don't recall his name.

23 Q. At family court?

24 A. Yeah.

25 Q. When you came out?

1 A. Yeah. I'm sorry. I -- maybe I wasn't
2 represented. I don't know the sequence of events.
3 Again, it was a traumatic experience. I don't recall.
4 I may not have even had an attorney by my side. I don't
5 know.

6 Q. Okay. Fair enough. I mean, we're talking
7 about events coming up on six years ago. You know, I
8 should have covered this at the beginning of the
9 deposition. If you don't know or you don't recall, I
10 want the best of your recollection, but I don't want you
11 to just make things up.

12 A. Okay.

13 Q. Let's move on in your timeline to the bottom of
14 page 14.

15 A. Yeah.

16 Q. 9/16/13, "Scott loses his badge, gun, and law
17 enforcement powers due to the arrest. Scott is
18 reassigned and loses out on promotional and transfer
19 opportunities."

20 A. Yes.

21 Q. So I'll represent to you that I went back and
22 checked my calendar. September 13th, 2013, was a
23 Friday. So the 16th would have been the following
24 Monday. Does that sound right to you that it was the
25 next workday after the arrest?

1 A. Yes.

2 Q. Where were you reassigned to?

3 A. The public access line. They said we need to
4 take you out of the -- out of this high-profile
5 position.

6 Q. Did this result in a change in your GS rating
7 or your pay scale?

8 A. No.

9 Q. No loss of pay?

10 A. No loss of pay.

11 Q. What promotional opportunities did you lose out
12 on?

13 A. I was -- I had already taken the test and
14 passed the test to be promoted to a GS-15, a unit chief.
15 I had -- I was intent on applying for promotions.
16 People -- but I was -- because of the arrest, because of
17 the pending investigation by the FBI, I wasn't allowed
18 to put in for anything.

19 I was trying to get transferred as well. And,
20 again, everything was put on hold and I was denied
21 transfer opportunities.

22 Q. What transfer opportunities did you miss out
23 on?

24 A. We have something called a -- what's it called
25 -- an OP list, an Office of Preference list. You tell

1 the bureau where you want to go and, once during your
2 career, they will send you where you want to go. And
3 it's based on seniority. I wanted to get out of West
4 Virginia and go back home. And I was not allowed to,
5 even though I was at the top of the list.

6 Q. Do you know if any -- when you say go back
7 home, where were you wanting --

8 A. Indianapolis area.

9 Q. Do you know if any openings occurred at the
10 Indianapolis area that you would have been eligible for
11 --

12 A. Several.

13 Q. -- during this time?

14 A. Several.

15 Q. What positions were they?

16 A. There was a counter-intelligence position in
17 West Lafayette and there was -- there were other just
18 general assignments in Indianapolis.

19 Q. Were they for unit chief positions?

20 A. No. I was -- I was trying to get out of West
21 Virginia, and whether that was through promotion to
22 headquarters or through -- I was willing to step down to
23 go back home.

24 Q. You say you had passed the test to be promoted
25 to unit chief. Did any unit chief openings come open

1 while you were --

2 A. Yes.

3 Q. -- while the criminal charges were pending?

4 A. Yes. And a person who had much less seniority
5 than me and came to CJIS a year after I did got the
6 position because I wasn't allowed to apply for it. I
7 was highly qualified for it, and I believe would have
8 gotten the position. There were several other positions
9 at headquarters that I could have gotten as well.

10 (Deposition Exhibit No. 30 was marked for
11 identification.)

12 Q. Mr. Ballock, I've handed you -- the reporter
13 has handed you what's been marked as Exhibit 30. This
14 is the dismissal order from the criminal charges in
15 magistrate court as well as the attachment agreement.

16 A. Yeah.

17 Q. Go to page -- first, let me go to the second
18 page. That will be the first page of the attachment.
19 Down there at the bottom lower left-hand corner, is that
20 your initials, STB?

21 A. Correct.

22 Q. Then on the last page, is that your signature
23 there?

24 A. Yes.

25 Q. And below that, your counsel signed it as well;

1 correct?

2 A. Yes.

3 Q. Without going into any details about the actual
4 discussion that occurred, is it fair to say that you
5 discussed this agreement with your counsel before you
6 signed it?

7 A. Yes.

8 Q. Looking on the second page, the first paragraph
9 of the agreement. "Scott Ballock acknowledges that
10 probable cause existed for West Virginia State Police to
11 file for the issuance of the warrants in this case
12 pursuant to West Virginia Code Section 61-3C-14a and
13 Section 61-2-9a." Did Corporal Gaskins have probable
14 cause to charge you with those violations?

15 A. I don't believe he did.

16 Q. You signed at the bottom of this agreeing that
17 he did. Did you submit a false statement to the
18 magistrate court?

19 A. In that regard, yes.

20 Q. Now, as an FBI agent investigating crimes, you
21 understood what probable cause meant; correct?

22 A. Yes. It's a very low standard.

23 Q. And when you would investigate cases, you would
24 gather the evidence and present it to a U.S. Attorney;
25 correct?

1 A. Yes.

2 Q. If the attorney told you this isn't enough, we
3 need more evidence, you would go back and get additional
4 evidence, wouldn't you?

5 A. Yes.

6 Q. Conversely, if the U.S. Attorney told you we're
7 good to go, we're going to move forward with these
8 charges, did you second-guess the U.S. Attorney and say,
9 hold on, I better go get more evidence?

10 A. No.

11 Q. Over your 14 years as an FBI agent, did you
12 ever investigate a case where the suspect got acquitted?

13 A. Yes.

14 Q. Did that mean you didn't have probable cause to
15 charge the suspect in the first place?

16 A. No.

17 Q. Did you ever have charges against a suspect in
18 a case where you had investigated, ever have charges
19 dismissed?

20 A. No.

21 Q. Did you ever have a situation where a suspect
22 in a case that you had investigated would be charged
23 with multiple counts and, as part of a plea deal, the
24 government would agree to dismiss certain counts in
25 order to get a guilty plea for another count?

1 A. Yes.

2 Q. Did that mean that you didn't have probable
3 cause to charge the suspect with the charges that were
4 dismissed?

5 A. No.

6 Q. You would agree with me that just because a
7 suspect ends up not pleading guilty or being found
8 guilty, that does not mean that there was not probably
9 cause?

10 A. Correct.

11 Q. And you just testified that you submitted a
12 false signed statement to the magistrate court saying
13 that there was probable cause to charge you when you did
14 not believe there was. Why did you do that?

15 A. I did that because my attorney advised me to.
16 I did that because I wanted to protect my children. I
17 was concerned about this reflecting poorly on me. I did
18 it because Benninger told me that Marcia Ashdown had
19 already agreed to expunge the case as soon as possible,
20 which we did 60 days later.

21 I did it because he said Marcia Ashdown
22 insisted on this statement because, even though she
23 believed -- and her words were, "My boys have been
24 behaving badly." Even though Marcia Ashdown told
25 Benninger that she believed they conspired with Ellen to

1 get me that she didn't want to see her boys face a civil
2 suit, and she believed that this would preclude me from
3 filing a civil suit.

4 Q. Any other reasons why you knowingly submitted a
5 false statement to the magistrate?

6 A. No. Everybody knew that probable cause didn't
7 exist. Marcia did. My attorney did. I believe Ellen
8 did.

9 Q. And you would agree with me that the magistrate
10 found probable cause and issued a warrant for your
11 arrest; correct?

12 A. Yeah. Sure. That's pretty easy.

13 Q. Let's refer back to your timeline for a minute.
14 Page 8 on your entry for May 21st, 2013, "Kenny Ice
15 interviews begin."

16 A. Yes.

17 Q. That's the day you first spoke to Kenny Ice?

18 A. I think so.

19 Q. It says here in your timeline that Mr. Ice
20 revealed that Ellen was having a sexual affair with West
21 Virginia State Police Trooper Chris Berry, that Ellen
22 and Berry were working to have you arrested so that you
23 would lose your job and so that Ellen would win custody
24 of the children and lifetime alimony payments.

25 A. Yes.

1 Q. And that Trooper Berry, at Ellen's request, was
2 conducting surveillance of you and your parents?

3 A. Yes.

4 Q. He told you all this at this meeting on
5 May 21st, 2013?

6 A. I don't know if this was aggregated when I made
7 the timeline, or if he told me that on the 21st.

8 Q. So you don't know if that's when he told you?

9 A. Yeah.

10 MR. CROOKS: I'm sorry. What page were
11 you referring?

12 MR. JEFFRIES: Page 8, entry for 5/21/13.

13 (Deposition Exhibit No. 31 was marked for
14 identification.)

15 Q. Mr. Ballock, I've handed you Exhibit 31. At
16 the top it says, "Interview of Kenny Ice by Scott
17 Ballock."

18 A. Yes.

19 Q. We received this from you in discovery. Am I
20 correct that you prepared this document?

21 A. Yes.

22 Q. And am I correct that the initials on the left
23 are by Kenny Ice?

24 A. Yes.

25 Q. Those are his handwriting; correct?

1 A. Correct.

2 Q. I take it then that you had typed this up and
3 brought it with you when you met -- well, no.

4 A. That's right.

5 Q. After you met Kenny Ice on May 21st, 2013, you
6 had another meeting with him?

7 A. We had several.

8 Q. And brought this and he read over it and
9 initialed it?

10 A. Yes.

11 Q. Take a moment to look through here. Would you
12 agree with me that there was absolutely no mention of
13 Chris Berry in this document?

14 A. I would agree with that.

15 Q. Why not?

16 A. Again, as I've said before, I'm not certain if
17 I was aggregating everything when I made this timeline.
18 He didn't tell me that during this interview. He would
19 -- he parsed information. He would repeatedly call me,
20 ask me to meet or talk to me on the phone. And I didn't
21 document everything that he told me.

22 My efforts were at documenting those things
23 that I thought would help me protect the children in the
24 family court hearings. When he told me that he was
25 having an affair with -- she was having an affair with

1 Berry and that he was going to arrest me, I was
2 unconcerned because I didn't think I was doing anything
3 wrong.

4 I didn't document it. I didn't document a lot
5 of things that he told me. I had a busy life. I was a
6 single parent. I was raising my two children. I work.
7 I didn't document everything he told me.

8 Q. As I understand it, you allege that there were
9 some text messages between Trooper Berry and Ellen; is
10 that correct?

11 A. According to Kenny Ice, Jr.

12 Q. Did you see the text messages?

13 A. I did not. Kenny Ice, Jr. said they were of a
14 personal nature, highly inappropriate messages between a
15 law enforcement officer and Ellen, someone that was
16 already in a relationship with him.

17 There was one message along the lines of what
18 should I bring over for lunch. This caused a fight --
19 or maybe what should I get for lunch. I don't know
20 which one sent it. It caused a fight between Ellen and
21 Kenny which resulted in deputies being called out to the
22 house.

23 Q. But you did not actually see those text
24 messages?

25 A. I did not. They were sent at a time when Berry

1 was apparently off duty.

2 Q. Okay. And so what exactly did Mr. Ice tell you
3 about Trooper Berry and Ellen?

4 A. That they were having a relationship.

5 Q. Sexual relationship?

6 A. Sexual relationship, yes, and that it was clear
7 from the email -- from the text messages.

8 Q. It was clear to him?

9 A. Yeah, clear to him.

10 Q. When did he say this affair began or this
11 relationship began?

12 A. I didn't -- I don't think I asked that and I
13 don't know he told me.

14 Q. How long did the relationship last?

15 A. I don't know the answer to that.

16 Q. How did Trooper Berry and Ellen meet?

17 A. I don't know the answer to that.

18 Q. Where would they meet to have sex?

19 A. I don't have the answer to that.

20 Q. Kenny Ice didn't provide you with any of this
21 information?

22 A. No.

23 Q. What I can't understand, Mr. Ballock, Ellen had
24 been seeing other men with your knowledge since
25 approximately 2003. So, at this point, for ten years.

1 The two of you were separated and in the process of
2 getting a divorce. She was dating Kenny Ice, had been
3 dating him for a year at this point. If she was having
4 an affair with Trooper Berry, why would you care?

5 A. I didn't care. I couldn't care less. The
6 reason he told me was because it's what started a fight.

7 Q. Between him and --

8 A. Between them. I cared only in that he also
9 said they were trying to find a way to arrest me.

10 Q. What specifically did he tell you about that?

11 A. Just that they were trying to find a way to
12 arrest me.

13 Q. Did he tell you why he believed that?

14 A. So that I would lose my job.

15 Q. But, I mean, why did he believe that they were
16 trying to find a way to arrest you?

17 A. I don't know. He was -- he was coy in a lot of
18 things. He, again, would parse out information,
19 increasingly damaging information. In fact, he once
20 told me I have one thing that I'm not even telling you
21 that would send Ellen to jail and she'd never see her
22 kids again, but I'm waiting to see how you treat me
23 through all this.

24 Q. That's what Kenny Ice told you?

25 A. Yeah.

1 Q. Now, in Paragraph 26 of your complaint it says
2 that "Ballock independently uncovered evidence which
3 corroborates the allegation that Trooper Berry was
4 maintaining a romantic relationship with Costlow." What
5 evidence did you uncover?

6 A. That night, Ellen and Kenny got into a physical
7 altercation and Ellen called 911. Ellen asked
8 specifically of the 911 operator to speak with Chris
9 Berry. She said that she had Chris Berry's personal
10 cell number. She told the 911 operator that Chris Berry
11 had been to her house earlier in the day.

12 The 911 operator asked why Chris Berry had been
13 to her house earlier in the day and Ellen told the 911
14 operator that he had been there investigating car
15 break-ins in the neighborhood. The 911 operator told
16 Ellen that Berry was working a midnight shift. And, of
17 course, remember, Berry had been to the house earlier in
18 the day investigating, I guess, magnanimously on his
19 time off, car break-ins.

20 Well, I learned from Kevin Tipton, Ellen's
21 former attorney who lived across the street, they had a
22 -- I learned from Kevin Tipton that the West Virginia
23 State Police had not investigated car break-ins in the
24 neighborhood, which makes sense. I don't think that --
25 I don't know, but in my experience, I've not worked with

1 state troopers who investigate car break-ins. Maybe
2 they do. But, in any event, it wasn't investigated by
3 the West Virginia State Police, according to Kevin
4 Tipton. He lived in the neighborhood, lived across the
5 street from us, actually. So he was fully aware of the
6 investigation.

7 The investigation into the neighborhood car
8 break-ins was conducted by the local sheriff's
9 department, which is appropriate. It makes sense. And
10 he also reminded me that Ellen's car wasn't one that had
11 been broken into and that the investigation had occurred
12 three months previous. But Berry was there conducting
13 an investigation with Ellen into car break-ins.

14 Q. How do you know Berry was there that day?

15 A. Because that's what Ellen said to the -- Ellen
16 said Berry was here earlier today investigating car
17 break-ins.

18 Q. Okay. Hasn't it been your position throughout
19 the divorce proceedings, the criminal prosecution, the
20 administrative investigation by the FBI, and, in fact,
21 in this case that Ellen Costlow suffers severe mental
22 illness, is a compulsive liar --

23 A. Yes.

24 Q. -- and is not to be believed?

25 A. Yes.

1 Q. Why do you believe her when she says Chris
2 Berry was there that day?

3 A. Well, because the same reason I believe Kenny
4 Ice. I don't just take people at their word. I
5 corroborate the information. When Kenny Ice told me
6 that Ellen was exposing my daughter, my nine-year-old
7 daughter to a convicted sex -- child molester, I went
8 and interviewed the child molester. I interviewed the
9 child molester's probation officer.

10 I also know that Ellen -- and it's in the text
11 messages that we've provided you -- says that she's so
12 good at lying because she sprinkles the truth in with
13 her lies. So the reason that I believe it's true is
14 because Kenny saw the text messages between Chris Berry
15 and Ellen, combined with the fact that Ellen told the
16 911 operator that Berry had been there earlier in the
17 day, combined with the fact that during discovery Chris
18 Berry admitted that he was there investigating car
19 break-ins. But, of course, he doesn't have any notes,
20 he didn't write a report, he only interviewed Ellen.

21 Q. He said that he was there August 12th, 2013?

22 A. No. No.

23 Q. So you have no independent corroboration that
24 he was there that day?

25 A. I do not. But it sure stinks to high heavens.

1 Interestingly, the deputies asked Ellen why
2 Kenny and she were fighting, and Ellen told the deputies
3 that they were fighting because Kenny had accused her --
4 had seen messages and accused her of having a sexual
5 relationship with Chris. And they asked, well, why was
6 Chris Berry here earlier in the day. And she told them
7 a different story. She told them that he was there
8 investigating her -- theft of her laptop, which occurred
9 in Fairmont, West Virginia, and was appropriately
10 investigated by the local authorities there three months
11 prior.

12 And, again, I don't know what West Virginia
13 State Police do, but in my experience I've never known
14 West Virginia -- or state troopers to have jurisdiction
15 over and concerns about the theft of a stolen laptop.
16 But her story changed.

17 Q. So the inconsistency of her story makes it more
18 credible?

19 A. The inconsistency of her story shows me that
20 she was under stress and she got caught in her lie. I
21 don't --

22 Q. The lie could be that Chris Berry was never
23 there at all, couldn't it?

24 A. Yes.

25 (Deposition Exhibit No. 32 was marked for

1 identification.)

2 Q. Mr. Ballock, this was produced by you in
3 discovery.

4 MR. CROOKS: Exhibit 32?

5 MR. JEFFRIES: 32, yes. Sorry.

6 Q. It says at the top, "TB phone conversation with
7 Sergeant Kief," and discusses a telephone conversation
8 between your father Tom Berry (sic) and Sergeant Kief.
9 Would you agree that's a fair characterization of it?

10 A. Between my father Tom Ballock --

11 Q. I'm sorry. Tom Ballock.

12 A. -- and Sergeant Kief; correct.

13 Q. Are these your father's notes of the phone
14 conversation?

15 A. No. That was his recollection of the phone
16 conversation to me.

17 Q. Did you type this or did he?

18 A. I did.

19 Q. When were these notes made?

20 A. I don't remember. Well after it occurred
21 because we had problems coming up with the date. That
22 was our best estimate.

23 Q. So, well after this conversation occurred, your
24 father relayed to you his recollection of the --

25 A. He relayed to me his conversation with Kief

1 immediately after it happened. But then I wanted to
2 write this up some time later and said remember that,
3 tell me again what happened.

4 Q. Okay. Why did your father contact Sergeant
5 Kief about allegations that his
6 soon-to-be-ex-daughter-in-law was seeing a state
7 trooper?

8 A. My dad said that he did that to protect Trooper
9 Berry, actually, because Ellen had sexual relations with
10 men and would then go tell their wives about the
11 relationship. And he said that he was trying to help
12 Berry avoid the same fate.

13 Q. Now, there's no mention in here that your
14 father asked Sergeant Kief to file a formal complaint
15 against Trooper Berry, is there?

16 A. No.

17 Q. Did your father tell you that he asked Sergeant
18 Kief to file -- that he wanted to file a formal
19 complaint against Trooper Berry?

20 A. I don't think he did. I think, again, I think
21 he was calling just to give a heads-up.

22 Q. Let's go back to your timeline.

23 MR. WILLIAMS: Take a break?

24 MR. JEFFRIES: Let me finish this up.

25 Q. Let's go to page 12. Are you there?

1 A. Yeah.

2 Q. Okay. Your entry for August 15th, 2013,
3 indicates that you then contacted Sergeant Kief to
4 confirm that the state police failed to document its
5 response to a violent domestic incident between Ellen
6 and Kenny Ice on March 6th, 2013?

7 A. Yes.

8 Q. And that Sergeant Kief told you it was none of
9 your business, yelled at you --

10 A. Yes.

11 Q. -- and then angrily tells you that Trooper
12 Berry did not engage in a sexual relationship with
13 Ellen. So the purpose of your call wasn't to discuss
14 this allegation that Trooper Berry was allegedly seeing
15 Ellen but to ask about this domestic violence incident
16 on March 6th; correct?

17 A. Correct.

18 Q. What did you tell Sergeant Kief?

19 A. I asked him why there wasn't any documentation
20 made when his troopers responded to a domestic violence
21 -- a very violent domestic violence episode, why they
22 wouldn't make a record of that, is that common
23 procedure. At first, I called to see if they did
24 because I wanted to obtain a copy of it. He said that
25 they didn't and that it was not uncommon for them to not

1 write up such a report.

2 Q. So this was August. This domestic violence
3 call occurred in March, five months earlier. Why were
4 you just now contacting the state police about it?

5 A. Again, Kenny Ice parsed out information. And
6 as you'll see, 8/15, we're getting closer to the custody
7 hearing. Maybe it just came to my -- you know, maybe I
8 just thought then that I needed to get that.

9 Q. Did Trooper Berry respond to this call on
10 March 6th?

11 A. I don't know.

12 Q. How did Trooper Berry's name come up if you
13 were just calling to talk about this report?

14 A. Because I knew that my dad had previously
15 called Trooper Kief about Trooper Berry.

16 Q. And so why did it come up?

17 A. I don't know. I don't know if I brought it up
18 or if Kief brought it up. I don't remember how it came
19 out.

20 Q. You testified earlier that you really didn't
21 care if Trooper Berry was seeing Ellen?

22 A. No.

23 Q. Did you ask Sergeant Kief if you could file a
24 formal complaint against Trooper Berry?

25 A. No.

1 Q. Did Sergeant Kief speak to Trooper Berry about
2 these allegations of Trooper Berry's involvement with
3 Ellen?

4 A. I have no idea.

5 Q. Did Sergeant Kief speak to Ellen about the
6 allegations that she was seeing one of his troopers?

7 A. I have no idea.

8 Q. Paragraph --

9 A. But I will say that in discovery, we asked for
10 that information and the only thing that you could
11 provide was one single page of scribbles by Sergeant
12 Kief, no investigative reports, no notes, no nothing.

13 Q. It's true, I mean, you've testified that
14 neither you nor your father asked Sergeant Kief to open
15 up a formal complaint?

16 A. Right. But it's standard practice in law
17 enforcement agencies, if such an egregious violation is
18 alleged against one of your troopers, you take notes,
19 you conduct an actual investigation. You don't -- I was
20 surprised. I was shocked at the extent of his
21 quote/unquote investigation was his handwritten
22 scribbles.

23 Q. Okay. In Paragraph 74 of your complaint, you
24 allege that Sergeant Kief never interviewed you or your
25 father?

1 A. Right.

2 Q. But didn't you and your father both relay your
3 concerns to Sergeant Kief?

4 A. Relaying my concerns is not him interviewing.

5 Q. But you did relay your concerns; correct?

6 A. Yes.

7 Q. Was there information that you were holding
8 back for a later interview?

9 A. No. He did ask me about it. He just said he
10 didn't do it.

11 Q. What information could -- I mean, why would he
12 need to speak to you again if you and your father both
13 relayed what information you knew?

14 A. All this information that I've already shared,
15 that Ellen does that sort of thing, that she has sex
16 with people to manipulate things, that Kenny Ice said
17 that he saw the text messages. And then that would
18 allow Sergeant Kief to check his text messages.

19 Ellen's inconsistent stories to the operator.
20 Ellen's telling the operator that Berry had been there
21 earlier in the day. All sorts of things.

22 Q. And you didn't tell -- you didn't share those
23 with Sergeant Kief when you first raised the issue of
24 Trooper Berry?

25 A. No, because that was not the purpose of my

1 call. The purpose of my call was simply to ask why
2 wasn't there any documentation by the West Virginia
3 State Police who responded to a violent domestic
4 incident at which my daughter was present. And he said
5 that's not uncommon.

6 Q. But you did speak, even though the purpose of
7 your call was to ask about this report or lack of a
8 report, you did speak about the allegation that Trooper
9 Berry was seeing your --

10 A. I don't know that we spoke about it. I think
11 it was just a very quick -- I already talked to him, he
12 didn't do it.

13 Q. And you didn't, at that point, say --

14 A. Let me give you more --

15 Q. I've got text messages, I've got this --

16 A. No.

17 Q. -- I've got that.

18 A. No.

19 Q. All right.

20 A. Again, because that wasn't the purpose of my
21 call. That wasn't my primary concern.

22 MR. JEFFRIES: Okay. Let's go ahead and
23 take a break. I know at least some lunch is here.

24 THE VIDEOGRAPHER: The time is 12:24. We
25 are off the record.

1 (There was a short break in the
2 proceedings.)

3 THE VIDEOGRAPHER: We are back on the
4 record. The time is 12:57.

5 BY MR. JEFFRIES:

6 Q. MR Ballock, in Paragraph 68 of your complaint
7 you allege that Corporal Gaskins prepared an incident
8 report that was -- and I'm quoting from the complaint
9 here -- "Replete with inaccuracies and outright
10 salacious lies."

11 So I'll hand you what's going to be marked as
12 Exhibit 33. This is the incident report you were
13 referring to in the complaint; correct?

14 A. Correct.

15 (Deposition Exhibit No. 33 was marked for
16 identification.)

17 Q. Can you identify for me any inaccuracy or
18 outright salacious lies in the report?

19 MR. CROOKS: Mark, what paragraph?

20 MR. JEFFRIES: Paragraph 16 of the
21 complaint.

22 Q. Okay?

23 A. Excuse me.

24 Q. You're on the second page?

25 A. Yes. The last paragraph, I do not believe my

1 behavior was obsessive, I don't know Ronnie Gaskins'
2 background in psychiatry to make that statement. The
3 next point --

4 Q. Let me address that. Now, you would agree with
5 me that the incident report does not show that -- does
6 not state that you are obsessive or exhibiting obsessive
7 behavior; correct? It says the accused appears to show
8 obsessive behavior; correct?

9 A. That's a statement.

10 Q. Would you agree that that's a statement of
11 opinion?

12 A. Yes.

13 Q. Okay. Go on to the next one.

14 A. I'd like to point out just -- it's not an
15 inaccuracy, but I'd like to point out that the close-up
16 pictures of the accused crying, that was sent to her
17 after she sent me one like that. And I believe Charles
18 provided that to you.

19 Q. You're on page 3 now?

20 A. Page 3, second paragraph. "One email in
21 particular from westcoasttwiggs to victim's email
22 account and Kenny Ice's email account." I don't believe
23 I ever sent it to Ellen. I believe I sent it only to
24 Kenny Ice.

25 Q. Would you characterize that as an inaccuracy or

1 an outright and salacious lie?

2 A. Inaccuracy. Page 4, the victim advised the
3 reason the accused wanted her to come back into his life
4 was so she could fulfill his fantasy.

5 Q. Which paragraph are you on?

6 A. The first paragraph.

7 Q. Okay. I see it, about four lines down?

8 A. That's a salacious lie.

9 Q. So it's your position that Ms. Costlow did not
10 tell Corporal Gaskins that the reason you wanted her
11 back was to -- so that you could fulfill -- so that she
12 could fulfill your fantasy?

13 A. No. That statement is a lie.

14 Q. But you have no reason to doubt that she
15 advised Corporal Gaskins of that, would you?

16 A. No.

17 Q. Okay.

18 A. The victim advised the accused would record men
19 having sex with her and he would get off on watching the
20 videos. That's a lie.

21 Q. Again, do you have any reason to believe that
22 she did not tell Corporal Gaskins that?

23 A. No.

24 MR. CROOKS: What was the page and
25 paragraph referenced?

1 THE DEPONENT: Page 4, Paragraph 1.

2 A. The victim advised that the camera would not
3 function properly or the battery was going low, the
4 accused would "hyperventilate," in quotes. That's a
5 lie?

6 Q. So Ms. Costlow did not tell Corporal Gaskins
7 that?

8 A. I don't have any reason to believe that.

9 Q. You don't believe that she told him that?

10 A. No. I didn't say that. I don't have any
11 reason to believe that she didn't tell him.

12 Q. Okay. All right. Sorry. Go ahead.

13 A. The victim advised the accused had a file on
14 every male subject that responded to the Craigslist.
15 That's a lie.

16 Q. And, again, is it the fact that she told
17 Corporal Gaskins that a lie or is what she is saying a
18 lie?

19 A. What she is saying is a lie.

20 Q. But you have no reason to believe that Corporal
21 Gaskins was lying when he said that she advised him of
22 that?

23 A. Correct. I just don't understand why Corporal
24 Gaskins wouldn't talk to me. I have copies of the
25 videos on my iPad and DVDs were --

1 Q. Which --

2 A. Second paragraph, page 4. Sorry. That's a
3 lie.

4 Q. And, again, kind of with the standard line of
5 questioning here. It says, "the victim advised." Do
6 you believe that Ellen did not advise Corporal Gaskins
7 of that?

8 A. I have no reason to believe that. Victim
9 advised, to your point, "the accused would make fun" --
10 so this one isn't the victim advised. "The accused
11 would make fun of Brett Twiggs and Brett Twiggs had an
12 email account." I'm sure Gaskins, if he had to write it
13 again, would write the victim advised.

14 Q. You believe that she told him that?

15 A. Sure.

16 Q. Okay?

17 A. The victim advised the emails -- making
18 reference to sexual acts with animals were excerpts of
19 her and the erotic fictional writing. Same.

20 The accused got off on the erotic fictional
21 writing. I have no reason to believe that Ellen didn't
22 tell him that. And if he had to write it over again, he
23 would write the victim said.

24 The victim advised -- blah, blah, blah -- when
25 her father passed away. Her father is still very much

1 alive. So that's just an inaccuracy.

2 Due to officer safety reason -- oh, sorry.

3 Page 5, fifth paragraph. Due to officer safety reasons,
4 the arrest warrants were served at the Monongalia County
5 Magistrate Court. The accused is a federal law
6 enforcement officer and carries an issued firearm. I
7 have serious doubts that due to officer safety reasons
8 that's why they served it on me at and in front of the
9 family court judge. Again, I walked into their
10 detachment fully armed.

11 Q. But the rest is true, you would agree? I mean,
12 they were served on you at the Mon County Magistrate
13 Court?

14 A. Yes.

15 Q. You were a federal law enforcement officer, and
16 you did carry an issued firearm; correct?

17 A. Yes.

18 Q. Okay.

19 A. Page 6, second paragraph, third line from the
20 bottom. The accused got into an argument and the
21 accused pushed her down and fell onto the ground and
22 hurt her knee. The victim advised her children were
23 present when this argument occurred. Again, lies.

24 Q. But again, it says, "the victim advised." Do
25 you believe that Ellen did not tell Corporal Gaskins

1 that?

2 A. No. But had he come and talked to me or the
3 children he would know that -- and my innocent children,
4 9 and 11, had no reason to lie -- that that didn't
5 happen, nor did the next paragraph, screaming in her
6 ear. But, again, yes, he wrote, "The victim advised."

7 Next paragraph, the accused told her that is --
8 that's just a typing error -- that is -- I guess he
9 meant to say a suicidal person is the most dangerous.
10 That's a lie that I did any of that. But, again, I have
11 no reason to believe that if he had to write it over
12 again he would write the victim advised.

13 Two more paragraphs down, second from the
14 bottom. I never put her in a headlock and asked her if
15 she was ready to die. But, again, he wrote, "The victim
16 advised," like you said.

17 Next page, 7, top paragraph. The victim
18 advised Scott Kirby is one of the individuals that I set
19 her up with through Craigslist. That's a lie. But,
20 yes, he said the victim advised.

21 Second paragraph, the victim alleged that her
22 boyfriend Kenny Ice took her cellular phone and handed
23 it over to the accused. It was not her cellular phone.
24 It was Kenny's cellular phone. But, again, he wrote,
25 "The victim alleged." But, again, this is why you

1 interview more than just the complainant. Everyone
2 knows that.

3 This is a good one. The third paragraph, the
4 victim went on displaying that the accused would cut his
5 toenails short, to the point where they would bleed and
6 make a comment it was a relief. She accused me of being
7 a cutter. She told the -- I have no idea how she came
8 up with that. That was pretty fantastical. She told
9 the psychiatrist that I was a cutter and therefore I was
10 dangerous.

11 I was going through, obviously, the most
12 difficult time of my life, and she, in response to that,
13 had me roll up my pant legs and my sleeves to see that I
14 have no scars. I'm not a cutter. I don't know why she
15 -- she would have said those things.

16 Well, I do know why. She was trying to make me
17 out to be a monster. It fit within her narrative.
18 That's a lie. But, again, as you say, he wrote, "The
19 victim."

20 Q. So --

21 A. But, again, that's why you talk to other
22 people. You don't just talk to just the complainant
23 unless you're trying to accomplish an objective.

24 Q. You would agree with me then that nearly
25 everything that you've characterized as a lie was

1 related to -- it even explicitly says in the report that
2 Ellen told Corporal Gaskins that.

3 A. Correct.

4 Q. Would you agree that on the two or three
5 occasions you pointed out where he did not actually say
6 -- you know, preface the statement with "the victim
7 advised," would you agree that if you read in context
8 he's just relaying what she told him?

9 A. Yeah.

10 Q. In Paragraph 216 of your complaint it says
11 "When he prepared the report, Gaskins knew or should
12 have known that the statements provided to him by
13 Costlow were false." I'd like to break that down. Why
14 do you think Corporal Gaskins actually knew the
15 statements were false?

16 A. Because I believe that they worked in concert
17 with Ellen to affect my arrest at family court to
18 advantage Ellen and disadvantage me based upon all the
19 other evidence. And, at minimum, he should have known
20 because he should have interviewed more than the
21 complainant, especially in a divorce case. Everyone
22 knows that that's where false allegations are routinely
23 made. It's unbelievable.

24 Q. I don't want to interrupt you. Are you done?

25 A. I'm done.

1 Q. Okay. That was my next question. Why do you
2 think he should have known the statements were false and
3 you believe he should have interviewed more people than
4 just Ms. Costlow?

5 A. You hear divorce -- you hear divorce,
6 immediately your antennae go up.

7 Q. Would you agree that that's the same -- in
8 terms of not just divorce but a non-married couple
9 that's in a fight?

10 A. Yes, but going through a divorce raises it to
11 another level with regard to false allegations.

12 Q. So Kenny Ice and Ellen were going through a
13 fight, separation back in May of 2013 when he approached
14 you. Did you contact Corporal Berry or Trooper Berry to
15 find out about the allegations against him?

16 A. To -- I'm sorry. Ask that again.

17 Q. Kenny Ice informed you that he believed Ellen
18 and Trooper Berry were intimately involved?

19 A. Yes.

20 Q. They were fighting at the time; correct?

21 A. Correct.

22 Q. That's why Kenny came to you; correct?

23 A. Correct.

24 Q. Did you go to Trooper Berry to corroborate her
25 story?

1 A. I did not.

2 Q. You stated in the complaint, specifically in
3 Paragraphs 139 and 140, that Ellen is a, quote,
4 "skillful liar." Why should Corporal Gaskins have known
5 that her statements were false especially when she had
6 your own emails to back a lot of them up?

7 A. Because had he done his job properly and
8 professionally, he would have -- and had he not been
9 trying to serve another objective, he would have
10 interviewed more than the complainant.

11 Q. So you just believe he didn't conduct an
12 adequate investigation?

13 A. On purpose.

14 Q. Who was this report provided to?

15 A. Which report?

16 Q. The incident report?

17 A. Who was it provided to?

18 Q. Yes.

19 A. I don't understand the question. They created
20 it for their --

21 Q. Do you know who read this report?

22 A. Who read it?

23 Q. Yes.

24 A. I have no idea who all read it.

25 Q. Do you know if it was provided to anyone

1 outside of the criminal proceedings?

2 A. I don't know. But I wouldn't be surprised if
3 Christi Cooper-Lehki received it as part of her
4 investigation. I don't know.

5 Q. Between the time that you were arrested in
6 September 2013 and the time that the charges against you
7 were dismissed in April 2016, you didn't have any
8 contact with Sergeant Kief, did you?

9 A. No.

10 Q. During that same timeframe, did you have any
11 contact with Sergeant Gaskins?

12 A. No.

13 Q. During that same timeframe between your arrest
14 and the dismissal of the charges, did you have any
15 contact with Trooper Berry?

16 A. No.

17 Q. Did any of the troopers, my clients, ever offer
18 to drop the criminal charges against you?

19 A. Your clients?

20 Q. Yes.

21 A. No.

22 Q. Did Ellen ever offer to drop the charges
23 against you?

24 A. Through the assistant prosecutor.

25 Q. Which assistant prosecutor?

1 A. Cindy Scott. Cindy Scott, at my initial
2 hearing, before it began, Benninger and Scott approached
3 the bench and Benninger explained to the judge what this
4 was all about in reality and it belonged in family
5 court. Cindy Scott held up a West Virginia statute book
6 and said these are all the ways you can arrest someone
7 in West Virginia, if you want to find a way to arrest
8 someone, you can. The West Virginia State Police dumped
9 this in my lap. The judge looked at her and said and
10 now you're dumping it in my lap. And she shrugged.

11 My attorney told me that Cindy Scott did not
12 want to pursue these charges against me but that Ellen
13 was threatening her that if she didn't she would make a
14 big stink about it. He said -- and this was before she
15 announced. He said that Cindy Scott was going to run to
16 be a judge, and she didn't want the victim of a domestic
17 to be able to say that she didn't take care of her. So
18 she was threatening Cindy Scott.

19 And, in fact, Cindy Scott believed that Ellen
20 once surreptitiously recorded a conversation with her.
21 So, again, Cindy Scott didn't want to prosecute me
22 according to Mike Benninger. But she said Ellen is
23 forcing me to.

24 And Cindy Scott, though, worked with Ellen and
25 offered to dismiss the case if -- on the condition that

1 my father remove a website that he had created which had
2 Ellen on it. Benninger --

3 Q. Which one?

4 A. I don't know what it is. Benninger called my
5 dad into his office and me, told us of Cindy Scott's
6 proposal. And my dad refused, so Benninger threw him
7 out of the office.

8 Q. You don't know the name of the website that
9 Cindy Scott wanted removed?

10 A. No.

11 Q. So Ellen continued to prosecute the case until
12 it was eventually dismissed?

13 A. Yes.

14 Q. Was Trooper Berry involved in your criminal
15 prosecution at all?

16 A. I don't know.

17 Q. Did he ever appear at any of the hearings
18 related to the criminal charges?

19 A. Not that I'm aware.

20 Q. How did my clients, Lieutenant Kief, Sergeant
21 Gaskins, and Trooper Berry, how did they abuse the
22 criminal process?

23 A. By working with Ellen to have me arrested at
24 family court to advantage her and disadvantage me.

25 Q. And --

1 A. By forming an inappropriately close
2 relationship with a complainant, by violating and
3 inviting someone else, Ellen, to violate a judge's
4 order, and by giving her suggestions as to how to
5 violate it, by --

6 Q. Let me pause you there. When you're talking
7 about violation of the order, that's what you testified
8 to earlier about talking to the FBI?

9 A. Uh-huh.

10 Q. And that was after the charges had been
11 dismissed; correct?

12 A. Correct. But he's still a part of the criminal
13 justice system and he's abusing his position to try and
14 get me fired, clearly, because it was more to him.

15 Q. Any other ways that they abused the criminal
16 process?

17 A. By not following their policy manual in
18 conducting the investigation.

19 Q. In Paragraph 183 of the current complaint you
20 allege that the state police defendants continued their
21 efforts even after it was apparent the plaintiff was
22 innocent. How did they continue their efforts?

23 A. By all of those -- what I just said. By all of
24 those actions.

25 Q. Essentially continuing the prosecution?

1 A. Uh-huh. They had or should have had Christi
2 Cooper-Lehki's report.

3 I want to take a moment here to clarify
4 something. I provided Christi Cooper-Lehki's report to
5 the FBI as part of my internal inquiry. Todd Phillips,
6 in one of his message -- writings, made a point that I
7 did that in violation of the court's order. But I want
8 to let you know how that happened.

9 Q. Actually, Mr. Ballock, I was going to ask you
10 specifically about that later on.

11 A. Okay.

12 Q. If you'll just bear with me, we'll get there
13 soon.

14 A. Okay.

15 Q. What do you believe is the reason that
16 Lieutenant Kief and Sergeant Gaskins initiated a
17 criminal investigation against you?

18 A. I don't know how they came into contact. I
19 believe it's -- I believe it's because of Chris Berry's
20 relationship with Ellen primarily, so...

21 Q. So you believe that Trooper Berry contacted his
22 superior, at that time, Sergeant Kief, and said I'm
23 having an affair with this lady, we want to get her
24 estranged husband in trouble, help us out, and Sergeant
25 Kief said, yeah, let's do that?

1 A. No.

2 Q. How do you believe this came about then?

3 A. I believe that Sergeant Kief, when an
4 allegation was made against one of his troopers, he
5 circled the wagons and worked with Berry and Ellen to
6 figure out a way to hurt me.

7 Q. What evidence do you have to support that
8 belief?

9 A. An email message, for one, that Ellen sent to
10 Gaskins maybe five days before the custody hearing in
11 which she said the custody hearing is this coming
12 Friday. I have no understanding why it would be
13 important for their investigation to know why the
14 custody hearing was coming up because -- ask the
15 question again.

16 Q. What evidence do you have to support your
17 belief that the whole reason they initiated a criminal
18 investigation and brought charges against you was
19 because of Berry's relationship with Ellen?

20 A. Because of the sequencing of events.

21 Q. Can you explain that to me?

22 A. Chris Berry has a relationship with her, we let
23 Kief know about it, very shortly thereafter they began
24 an investigation, violate all of their policies, and
25 have me arrested at a family court hearing when that was

1 completely unnecessary.

2 Q. Any other evidence?

3 A. Not that I can think of right now.

4 Q. Do you have any evidence that -- strike that.

5 What outrageous acts did Sergeant Kief commit?

6 A. I've explained some of them. Shall I explain
7 them again?

8 Q. Yes. If you could -- I mean, if you've already
9 referred to them, just point me back to earlier
10 testimony. But what specifically did he do that you
11 believe is outrageous?

12 A. Specifically he invited Ellen to circumvent the
13 judge's order. And, through him, provide the FBI with
14 disparaging information. He thought he was being pretty
15 clever there.

16 He obviously wanted harm to come to me because
17 he gave Ellen suggested topics to include, has Scott
18 ever abused his position of authority which was well
19 outside of the scope of the bureau's internal
20 investigation into me seven days after the order was
21 issued at which Kief was sitting next to Ellen. The
22 email where he says that's great news that the
23 exculpatory information is being denied Scott. He
24 didn't use the term exculpatory information, but that's
25 what it was. Great news.

1 The fact that he's even communicating with a
2 complainant about those sorts of things. But then he
3 says that's -- I bet Scott was really embarrassed --
4 again, I'm paraphrasing -- and he walked out of court
5 with his tail between his legs. The fact that he then
6 tried to work to get me again for violating the judge's
7 order.

8 Q. Anything else that --

9 A. He served as a personal reference for Ellen to
10 get a job as a school teacher and called the school
11 board of one district and the school principal of
12 another district.

13 Q. How did that harm you?

14 A. How did that harm me?

15 Q. Yes.

16 A. I didn't -- think that that was the question.
17 I thought you were asking how his acts were outrageous.

18 Q. It was, but when you brought it up, how did him
19 providing a reference to Ellen to the school board harm
20 you?

21 A. That did not -- well, it harmed me in that I
22 imagine he defamed me when he spoke to them, and I'm
23 curious to know about any communications that he had
24 with them. We'll be asking that.

25 I'm sure he defamed me like he defamed my

1 father in the emails when he was talking about how my
2 father was crazy to Gabrielle Mucciola. I don't know
3 that -- maybe Kief has a psychiatrist degree --
4 psychiatry degree. Maybe he just chooses to be a police
5 officer instead and he knows about insanity. But he
6 defamed my father. He made -- he served as a character
7 reference to Ellen to a school board acting in his
8 capacity as a West Virginia State Police officer when he
9 knew or should have known that Ellen has a sexual
10 attraction to young children and Ellen was diagnosed as
11 a paraphiliac. That's a really absurd thing to do --

12 Q. Now --

13 A. -- to recommend --

14 Q. Why should he have known that she had that
15 diagnosis?

16 A. Because there's one email from Ellen to Kief
17 where she's talking about her diagnosis actually. I
18 can't imagine that the West Virginia State Police wanted
19 one of its troopers to be a character reference for
20 somebody who has had sex with a minor and has been
21 deemed by a psychiatrist to have sexual attraction to
22 young children.

23 Q. Is it your position that Sergeant Kief had read
24 the report from Dr. Cooper-Lehki?

25 A. I don't know. I have no proof of that. He

1 should have.

2 Q. Is there anywhere outside of that report that
3 would let him know that she had this diagnosis?

4 A. Had he talked to me.

5 Q. Is there anything besides the Cooper-Lehki
6 report that would have let him know that Ellen had this
7 diagnosis?

8 A. Had he talked to the guardian ad litem, had he
9 talked to her counselor, had he talked to anybody else
10 besides Ellen. But, of course, if you already know what
11 you want, you already have your objective, you already
12 have the side that you are trying to help, you're not
13 going to talk to other people. Why would you want any
14 contradictory information?

15 Q. Anything else that Lieutenant Kief did that you
16 would characterize as outrageous?

17 A. If he had anything to do with the trooper
18 approaching the FBI agent after I filed my complaint --
19 if he had anything to do with that or knowledge of it,
20 that would have been outrageous. Him -- no, that's
21 enough.

22 Q. Okay. Going back to this character reference
23 to the school board. You stated, I believe, what you
24 testified was you're sure Sergeant Kief defamed you to
25 the school board?

1 A. I'm not sure. Well, okay. Let me say I'm sure
2 in that I know he was out to do me harm. I know he's an
3 unprofessional trooper, and so it wouldn't surprise me
4 and I have suspicions and concerns that he would have
5 defamed me.

6 Q. You have suspicions and concerns, but no
7 evidence; correct?

8 A. Correct, not until we finish discovery.

9 Q. What outrageous acts did Sergeant Gaskins
10 commit?

11 A. Sergeant Gaskins violated his agency's policies
12 by not interviewing everyone he could, even when I
13 offered to waive my rights and to be interviewed. I
14 believe it was Sergeant Gaskins -- Sergeant Kief -- it's
15 interesting that Sergeant Kief had anything to do with
16 it at all when he assigned Gaskins to conduct the
17 investigation.

18 But then he was interviewing Ellen for an hour
19 and somehow the tape recorder didn't work, and so
20 Gaskins, instead of asking Kief -- well, first of all,
21 instead of memorializing the interview -- first of all,
22 Kief did not memorialize the interview after he learned
23 that the tape recorder didn't work. Instead, Gaskins
24 went to Ellen and said why don't you give me a written
25 statement about what occurred in that interview with

1 Kief where the tape recorder didn't work.

2 Q. Anything else that Sergeant Gaskins did that
3 was outrageous?

4 A. No.

5 Q. What outrageous acts did Berry commit?

6 A. I believe that he had a sexual relationship
7 with Ellen. I believe that he lied when he said he was
8 there conducting investigations into car break-ins in
9 the neighborhood. If he, in fact, was there
10 investigating car break-ins that had occurred three
11 months earlier, which didn't affect Ellen, he didn't
12 take notes, he didn't write a report.

13 Q. When did he say he was investigating car
14 break-ins? I recall Ellen saying that he was there to
15 investigate car break-ins, but --

16 A. Your response to us in discovery.

17 Q. Our response.

18 A. Berry said, yes, he was there investigating car
19 break-ins that happened three months earlier and were
20 investigated by another agency and for which he took no
21 notes of someone whose car was not broken into off --
22 off the clock.

23 Q. What else -- what other outrageous acts did
24 Trooper Berry commit?

25 A. That's all.

1 Q. I'd like to refer back to your timeline again
2 if we can.

3 A. Yes.

4 Q. Page 14.

5 A. Yes.

6 Q. So the Monday after you were arrested it says,
7 "Scott loses his badge, gun, and law enforcement powers
8 due to his arrest." Kind of -- and was reassigned.
9 Kind of explain to me how that came about. You come
10 into work on Monday morning, and just kind of expand on
11 what you have here in the timeline.

12 A. Yeah. At CJIS, one of the assistant directors
13 is assigned to CJIS, and I was called up to the
14 assistant director's office where there were a couple of
15 other senior executives. And they asked me what
16 happened, and I explained the situation. And they said
17 I hope you can understand that until we get this
18 resolved we're going to have to take your badge and gun
19 away and reassign you.

20 I was in a position where I was traveling
21 across the country meeting with chiefs of police, with
22 law makers, with high-profile people. And, of course,
23 you can't have an FBI agent who's been arrested do that
24 anymore, so they reassigned me.

25 Q. So did you turn in your gun and badge right

1 there in the office?

2 A. Actually, they drove me to my home to get my
3 gun.

4 Q. You didn't carry your gun to work with you?

5 A. I didn't. Let me clarify. I may have had my
6 personal weapon on me, but not the bureau weapon.

7 Q. Okay. When they drove you to your home to pick
8 up your gun, did you make any attempt to get all the
9 other bureau property that you had there?

10 A. This was while I was -- had moved out of the
11 house.

12 Q. Oh, you're right. I'm sorry.

13 A. Let me clarify. One other outrageous thing
14 that Chris Berry did, I believe he did. Kenny Ice, Jr.,
15 told me that Chris Berry was conducting surveillance of
16 me and my parents on behalf of Ellen and at Ellen's
17 request. Of course, I didn't care because I wasn't
18 doing anything.

19 And he said Chris lived a couple or three miles
20 around the corner from me. And that's how he was able
21 to do it so often and so easily.

22 Q. Did you ever see Chris Berry conducting
23 surveillance --

24 A. No, but I wasn't looking for surveillance.

25 Q. You were trained in counter-surveillance --

1 A. Yeah, but I don't look for it unless I'm
2 meeting with a source. Day-to-day activities here, it
3 was an office-type job. I don't look for
4 counter-surveillance.

5 Q. Okay. So, going back to the --

6 A. I mean, I don't engage in counter-surveillance.

7 Q. Going back to the loss of your badge and gun,
8 who was the assistant director that you saw that day?

9 A. Dave Cuthbertson.

10 Q. Can you spell that last name?

11 A. C-u-h -- C-u-t-h-b-e-r-t-s-o-n, perhaps.
12 Cuthbertson.

13 Q. You said assistant director. I imagine -- and
14 correct me if I'm wrong, but I imagine there's probably
15 numerous assistant directors over each section; is that
16 correct?

17 A. Correct.

18 Q. So he was assistant director of what?

19 A. CJIS.

20 Q. The whole facility?

21 A. Yes.

22 Q. Okay. You said there were a couple other
23 senior executives. Do you know who they were?

24 A. I forget their names.

25 Q. So they took you home to get your gun and they

1 brought you back to CJIS?

2 A. Yes.

3 Q. And you went back to work?

4 A. Yeah.

5 Q. Did they inform you at that time that they
6 would be conducting an investigation?

7 A. No, because it wasn't them who conducted the
8 investigation. The protocol is for OPR to conduct an
9 investigation.

10 Q. Did they inform you at that time that OPR would
11 be conducting an investigation?

12 A. I don't know that they informed me of that, but
13 it was understood.

14 Q. Okay. Now I understand that about a week and a
15 half later, on September 26th, 2013, the FBI began its
16 internal investigation?

17 A. No.

18 Q. No?

19 A. The FBI delayed its internal investigation
20 until the resolution of the misdemeanor criminal charge.
21 I invited them to and I asked them to, but their policy
22 is to not begin until...

23 Q. Regardless of when the FBI investigation began,
24 were you informed they were conducting an internal
25 investigation?

1 A. Yes.

2 Q. Who informed you?

3 A. It may have been via letter. I don't know
4 precisely who informed me.

5 Q. That leads to my next question. After the
6 charges were dismissed in the Mon County Magistrate
7 Court in April of 2016, what then happened at the FBI?

8 A. Then two agents came out to interview me. This
9 may have been the first time I was official and formally
10 notified of the investigation. Although, I knew it was
11 coming. And interviewed me about what happened.

12 Q. Were you still -- I take it you weren't put
13 back into your old position?

14 A. Correct.

15 Q. You weren't given your gun or badge?

16 A. Correct.

17 Q. That kind of leads to my next exhibit.

18 (Deposition Exhibit No. NO 34 was marked
19 for identification.)

20 Q. Mr. Ballock, Exhibit 34 is your signed sworn
21 statement that you gave to the FBI on June 29th, 2016.

22 A. Yeah.

23 Q. This is what you were just referring to?

24 A. Yeah.

25 Q. Actually, I do have a question. At the top

1 right-hand corner of each page in the header it says,
2 "6/29/16." Do you see that?

3 A. Uh-huh.

4 Q. But if you go to the back page, it says, "Sworn
5 to and subscribed before me on the 13th day of July,
6 2016." I'm not sure that makes any difference, but do
7 you know whether it was June or July?

8 A. So, the agent wrote this and then he came out
9 to me and had me sign it later.

10 Q. So the interview occurred June 29th, and then
11 you signed it July 13th; is that correct?

12 A. Yes.

13 Q. Okay. So on page 1 of the statement in the
14 first paragraph it says you were sworn by Supervisory
15 Special Agent James L. Herman and making a statement to
16 him and Supervisory Special Agent Lawrence W. Quigley.
17 Who is James Herman?

18 A. He's an agent out of the Clarksburg -- was an
19 agent out of the Clarksburg RA.

20 Q. It says that he's assigned to inspection
21 division. Was that his normal job, or was that a
22 special assignment?

23 A. Special assignment.

24 Q. Okay. So he's normally at the Clarksburg
25 agency and then I guess the FBI said we want you to do

1 an investigation. Would that be accurate?

2 A. Yeah.

3 Q. Who is Lawrence Quigley?

4 A. Another agent who I'd never met before.

5 Q. Do you know where he normally worked?

6 A. I don't.

7 Q. Let's go to page 2. On the first full -- well,
8 the only full paragraph about two-thirds of the way down
9 you state, "I ensured that nothing I sent to Ellen could
10 be construed as anything but appropriate and
11 respectful." I thought that was kind of an interesting
12 phrase. You didn't say that everything was appropriate
13 and respectful. You said that you ensured that it
14 couldn't be construed any other way. Did you
15 intentionally draft your emails and texts to her so that
16 you could plausibly deny they were intended to harass
17 her?

18 A. No. I wasn't thinking about that.

19 Q. Do you still believe that nothing that you sent
20 her could be reasonably construed by a reasonable person
21 as anything but appropriate and respectful?

22 A. Someone who is not familiar with the
23 circumstances and everything that happened and the way
24 we talked to each other normally.

25 Q. Let's go to page 3, there at the top -- very

1 top of the page, discussing reasons that Ellen would
2 contact you. You said, "Among other reasons, Ellen
3 contacts me to request that I help her secure employment
4 with the FBI." When did she ask you to help her secure
5 employment with the FBI?

6 A. That would have been in the fall of 2013 -- no
7 -- 2012.

8 Q. Shortly after the two of you separated?

9 A. Yeah, sometime after.

10 (Deposition Exhibit No. 35 was marked for
11 identification.)

12 Q. Mr. Ballock, Exhibit 35 is an email, about
13 midway down the page, from you to Ellen, November 11th,
14 2012, subject "Employment." Do you see that?

15 A. Yes.

16 Q. You state to Ellen, "When you begin looking for
17 work I hope you will look to me and my mom to help you
18 secure a good paying job. The bureau and mom's
19 employers are both good viable options." Am I correct
20 then that you offered to help her find employment with
21 the FBI; correct?

22 A. Yes.

23 Q. Going back to --

24 A. Well, I offered after she asked, but, yes.

25 Q. Going back to Exhibit 34, the sworn statement,

1 still on page 3. You also say that she "contacted you
2 to discuss the possibility of reuniting and saving your
3 marriage." When did she contact you to discuss
4 reuniting?

5 A. That would have been wintertime.

6 Q. Was this before or after the October 11th email
7 when you told her that you were convinced that she was
8 way beyond the point of any possible reconciliation?

9 A. Oh, it was after.

10 Q. Was it before or after the November 15th email
11 you discussed this morning where she told you that
12 reconciliation will never happen in your lifetime?

13 A. It was after.

14 Q. Do you have copies of any of these
15 communications?

16 A. No. These communications also were in person.

17 Q. Let's go back to the timeline. Page 1 of your
18 timeline.

19 A. Uh-huh.

20 Q. You discuss these communications. You say
21 between September 2012 to September 2013, "Despite her
22 allegations of harassment, Ellen regularly initiates
23 telephone contact with Scott." Did she ever contact you
24 any other way besides phone?

25 A. She showed up in person.

1 Q. Then below that you discuss emails which
2 corroborate some of the communications initiated by
3 Ellen?

4 A. Yeah.

5 Q. Okay. So the first one -- a portion of an
6 email message sent from you to her where you tell her,
7 "You never discussed with me the reason for your
8 2:00 a.m. telephone call." She never did send you an
9 email discussing the reason for it, did she?

10 A. No.

11 Q. Going to the next page, a portion of an email
12 from you to Guardian ad litem Teresa Lyons where you
13 tell Ms. Lyons that on April 22nd, 2013, you received a
14 cryptic two-sentence text message from Ellen saying she
15 had taken herself to the emergency room but that Summer
16 was safe. Do you have a copy of that text message?

17 A. No.

18 Q. Going on down, you discuss a portion of an
19 email message from you to Ellen on May 9th, 2013, where
20 you said, "Ellen, I received your barrage of text,
21 email, and phone messages from late last night." Do you
22 have the text or email messages that she sent that
23 night?

24 A. I probably do if it's an email message. Text
25 messages, I wouldn't have. Email messages, I probably

1 have.

2 Q. Is it fair to say that if you have those email
3 messages, they've been produced?

4 A. I can't say for certain.

5 Q. Can you go back and check --

6 A. Yes, of course.

7 Q. -- and if they haven't been produced,
8 supplement your production?

9 A. May I write on these? Are these mine?

10 Q. That will go with the record, but we'll trust
11 Charles to follow up on that.

12 MR. CROOKS: You're looking for email or
13 texts --

14 A. Email dated 5/9/2013 at 7:15 a.m.

15 Q. Well, no. We have that. I've seen that email.

16 A. Oh, you have.

17 Q. I'm talking, in that email, you reference that
18 she sent a barrage of text and email messages late last
19 night.

20 A. You want those?

21 Q. Yes.

22 A. Okay.

23 MR. CROOKS: So we're talking May 8?

24 A. Yeah.

25 Q. Or maybe early in the morning, right after

1 midnight.

2 MR. CROOKS: Yeah. I got you.

3 Q. The next one down, a portion of an email
4 message from Scott to Ellen, from you to her on June 1st
5 where you say, "Ellen, you asked me today about the good
6 parts of our marriage." Did she ask you by email or
7 text or --

8 A. No. She called me to say I want you to tell me
9 the ways in which our marriage was good.

10 Q. Lastly, you cite an email message from you to
11 her on July 2nd, 2013, "Ellen, please don't send
12 communications asking me to send the children or my mom
13 your love." Looking through all of these, what I see is
14 emails that you sent saying that she contacted you, but
15 you -- unless you can produce these emails on this
16 second one, the barrage of texts and email messages from
17 late May 8th, early May 9th, would you agree that you
18 don't have any documentation of any of these --

19 A. I'll have to check. But I know I didn't
20 capture because I didn't know I'd be sitting here -- I
21 didn't capture text messages.

22 Q. How about the communication asking you to send
23 the children or your mom her love, was that by phone or
24 was that email, text?

25 A. Telephone.

1 Q. Let's go back to your signed sworn statement
2 for a minute.

3 A. I believe telephone.

4 Q. Okay.

5 A. My sworn statement?

6 Q. Yeah. Page 7, please.

7 MR. PHILLIPS: Page 7?

8 MR. JEFFRIES: Page 7.

9 Q. At the very top of the page you talk about
10 Dr. Cooper-Lehki's testimony and you said, "Contrary to
11 Ellen's claims, Dr. Cooper-Lehki testified that Ellen
12 was not abused and that she was not a battered woman."
13 Now you were never charged with physically abusing
14 Ellen, were you?

15 A. No, but that was the underlying theme, the
16 false narrative that she created to enhance everything.

17 Q. What did Cooper-Lehki actually say in her
18 testimony?

19 A. I would have to have her testimony in front of
20 me.

21 Q. You don't recall?

22 A. No.

23 Q. Let's go to page 8. At the bottom, just before
24 the last paragraph you state, "I possess documentation
25 which lends credence to and corroborates these

1 allegations." And to put it in context, you're talking
2 about the allegations that Trooper Berry was seeing
3 Ellen. "I possess documentation which lends credence to
4 and corroborates these allegation in which I intend to
5 use in a civil suit against the West Virginia State
6 Police." What documentation were you referring to?

7 A. The 911 call Ellen made, the deputy's report in
8 which she mentions why she was seeing Chris Berry on his
9 time off earlier that day, the information from Kenny
10 Ice, Jr.

11 Q. You don't have any documentation of information
12 from Kenny Ice, do you?

13 A. He didn't have documentation.

14 Q. But what you state here is documentation, so
15 that's why I'm asking.

16 A. Yeah. Let me clarify that how this worked is
17 they interview me. They go back. I don't write this.

18 Q. Right.

19 A. They write it up and then they bring it back to
20 me and they say, you know, how is this. And I read it
21 and I'm looking at it for the overall content. And if I
22 had to go back and edit this more clearly, which I don't
23 think I edited it except for some grammatical stuff, I
24 would have worded that differently.

25 Q. Okay. But as it stands, that's your initials

1 in the upper left-hand corner?

2 A. Yeah.

3 Q. And your initials on the lower right-hand
4 corner?

5 A. Yeah.

6 Q. Indicating you reviewed the entire page?

7 A. Yeah.

8 Q. Okay. Is there any documentation corroborating
9 the allegations against Trooper Berry that we have not
10 discussed today?

11 A. No. I'm not holding anything back.

12 Q. Okay. Let's move on to page 9. Well,
13 actually, let's go to the bottom of page 8 to put things
14 in context. You talk about the dismissal agreement that
15 we just looked at earlier today. And one condition was
16 that you agreed that the state police had probable cause
17 for your arrest. And you state, "This was insisted upon
18 by the prosecutor so I would not be able to initiate a
19 lawsuit against the West Virginia State Police for
20 malicious prosecution." You understood then that the
21 dismissal agreement was intended to preclude the
22 malicious prosecution count; correct?

23 A. Say it again.

24 Q. You understood that this dismissal agreement,
25 Exhibit 30 that we discussed earlier today, was designed

1 -- was intended to preclude a malicious prosecution
2 count against the troopers?

3 A. Yes. I understood that was Marcia's reason for
4 including it.

5 Q. So why are there malicious prosecution counts
6 under both state law and 42 U.S.C. Section 1983 and the
7 complaint in this matter?

8 A. Because, although that was her intent, I still
9 believe that they violated that law. If the judge
10 disagrees with me, so be it.

11 Q. In Paragraph 225 of your complaint --

12 A. Yes.

13 Q. -- you allege shortly -- and you've alluded to
14 this earlier today, but this is your chance to talk
15 about it.

16 A. Yeah.

17 Q. "Shortly after attempting to serve the state
18 police defendants a uniformed representative with the
19 state police appeared at the Clarksburg Resident Agency
20 of the FBI to lodge a complaint with the Senior Resident
21 Agent about your filing of the civil action." I'd like
22 to discuss that for a little bit. How did you attempt
23 -- it says after attempting to serve my clients. How
24 did you attempt to serve the troopers?

25 A. I went to the Morgantown detachment, asked for

1 them.

2 Q. Attempted to serve them personally?

3 A. Yes. I didn't know what the rules were for
4 service.

5 Q. When you filed the original complaint pro se,
6 you received a copy of the notice of general guidelines
7 for proceeding pro se?

8 A. Uh-huh.

9 Q. Did you read them?

10 A. Yes.

11 Q. So you were informed that, even though you were
12 proceeding pro se, you were bound by the Federal Rules
13 of Civil Procedure.

14 A. Yes.

15 Q. Were you aware that Rule 4 provides that as a
16 party to the action you are not permitted to conduct
17 service?

18 A. No. I only attended law school for three
19 weeks.

20 Q. So who was the uniformed representative who
21 appeared at the resident agency?

22 A. I don't know. I wish you guys would tell me.

23 Q. To make sure that I'm clear, the resident
24 agency is a different physical location and different --
25 I guess within the organization chart, it's a completely

1 different entity from CJIS; correct?

2 A. Correct. CJIS is considered a headquarters
3 division. That's -- those are -- the RA, they're field
4 agents.

5 Q. So the RA is in downtown Clarksburg?

6 A. I believe so.

7 Q. It's not at CJIS?

8 A. It's not at CJIS.

9 Q. And you didn't work at the resident agency?

10 A. I did not.

11 Q. Was the senior supervisory resident agent of
12 the resident agency in your chain of command?

13 A. No.

14 Q. He didn't supervise you?

15 A. No.

16 Q. He didn't participate in your evaluations or
17 anything like that?

18 A. No.

19 Q. Who was the senior supervisory agent at the
20 Clarksburg Resident Agency at that time?

21 A. I don't know who it was. The person who told
22 me that it happened did not mention a name. And because
23 I didn't want to -- I didn't want any appearance of
24 impropriety, I didn't ask any questions of her when she
25 told me this information.

1 Q. Who told you?

2 A. Sue Barrow, my immediate supervisor. And even
3 though my good friend and deskmate was friends with all
4 those guys, I didn't ask him about it either.

5 Q. You said he was friends with all those guys,
6 what guys?

7 A. All the guys at the Clarksburg RA.

8 Q. When did you learn that this supposed trooper
9 uniformed representative showed up?

10 A. Gosh. I don't remember when I learned that.

11 Q. Can you give me an approximation? So the
12 complaint was filed in April of 2017. The first amended
13 complaint, if I'm correct, was filed about a month later
14 in May 2017.

15 A. It had to have been around that time.

16 Q. April/May 2017?

17 A. Yeah.

18 Q. That's when you learned about it? Not when it
19 happened, that's when you learned about it?

20 A. When it happened and I learned about it, I
21 think.

22 Q. What did -- so they told you it was probably
23 April/May 2017?

24 A. Well, they didn't tell me when it happened.
25 They just said it happened.

1 Q. Okay.

2 MR. JEFFRIES: All right. I am informed
3 that we need to change disks, so let's take a break.

4 THE VIDEOGRAPHER: The time is 1400. We
5 are off the record.

6 (There was a short break in the
7 proceedings.)

8 THE VIDEOGRAPHER: We are back on the
9 record. The time is 1411.

10 (Deposition Exhibit No. 36 was marked for
11 identification.)

12 BY MR. JEFFRIES:

13 Q. Mr. Ballock, you have been handed Exhibit 36
14 which is the April 10th, 2017, letter you received from
15 Timothy Dowling at the Office of Professional
16 Responsibility --

17 A. Yes.

18 Q. -- informing you of the FBI's proposal to
19 terminate your employment.

20 A. Yes.

21 Q. I'd like to turn to page 2 of this letter.

22 MR. CROOKS: This is 36?

23 MR. JEFFRIES: Yes.

24 Q. The first full paragraph there on page 2. It
25 says, "Your ex-wife described how you both arranged for

1 men found on the Internet to come to your home and have
2 sex with her while you videotaped the encounters"; is
3 that true?

4 A. It's not true.

5 Q. Okay. Let's go to page 4. About midway
6 through that first full paragraph there Mr. Dowling
7 states, discussing your arrest at family court. "In
8 fact, the West Virginia State Police contacted the FBI
9 before West Virginia State Police executed your arrest
10 and planned your arrest on the day of the child custody
11 hearing at the courthouse to ensure you were not armed."

12 Were you aware prior to receiving this letter
13 that the state police had contacted the FBI to
14 coordinate your arrest?

15 A. No.

16 Q. Let's go to page 15, please.

17 THE VIDEOGRAPHER: I need you to adjust
18 your mic a little. If you could put it above that
19 button right here.

20 THE DEPONENT: Yeah.

21 THE VIDEOGRAPHER: Not that high. That's
22 okay. Just right -- right here.

23 THE DEPONENT: Sorry.

24 THE VIDEOGRAPHER: That's okay. There you
25 go. Perfect.

1 BY MR. JEFFRIES:

2 Q. Page 15?

3 A. Yeah.

4 Q. Note 16 there at the bottom towards the end of
5 the note. It says, "Moreover, in your ex-wife's
6 statement she told bureau investigators that you had
7 used an alias to frequent men-for-men listings on
8 Craigslist while you and your ex-wife lived in Indiana";
9 is that true?

10 A. Yes.

11 Q. Why did you frequent the men-for-men listings?

12 A. Wait. I was commenting about the alias. Say
13 it again.

14 Q. In your ex-wife's statement she told bureau
15 investigators that you had used an alias to frequent
16 men-for-men listings on Craigslist when you and your
17 ex-wife lived in Indiana.

18 A. Show me this. Where?

19 Q. It's the second-to-last sentence of Note 16.

20 A. Yes. That's not true.

21 Q. So you did not?

22 A. No.

23 Q. Now, I take it you've reviewed this letter
24 before today?

25 A. I've read it. I've not reviewed it since I

1 received it. But just like Gaskins' report, this is all
2 she said.

3 Q. Understood. Can you show me anywhere in this
4 letter where a contact by the state police with the
5 Clarksburg Resident Agency is mentioned?

6 A. I'd have to read it, but I take your word that
7 it's not.

8 Q. On the very last page, page 18, after
9 Mr. Dowling's signature box it says there were
10 enclosures. And I understand from your discovery
11 responses that you never received the enclosures?

12 A. No. I'm allowed to look at them at the office.
13 I'm put in a room in security division, given the letter
14 and all the investigative documents, and I'm allowed to
15 look at them, I'm allowed to take notes, but I've got to
16 leave it all there.

17 Q. So the enclosures were the investigative
18 documents; is that correct?

19 A. Yeah. I don't have any. You could ask for
20 them.

21 (Deposition Exhibit No. 37 was marked for
22 identification.)

23 Q. Mr. Ballock, Exhibit 37 is your written
24 submission that you made to the Office of Professional
25 Responsibility on June 14th, 2017. So, just to make

1 sure I understand the process, you get the letter in
2 April proposing your discharge, then you have a chance
3 to defend yourself, basically?

4 A. Yes.

5 Q. And then, at some point later, they actually
6 either adopt or don't adopt the recommendation; is that
7 correct?

8 A. Right.

9 Q. Okay. So this was in the interim after you
10 received the notification or the proposal but before you
11 were actually terminated; correct?

12 A. Correct.

13 Q. Okay. On the first page here it says on the
14 bottom paragraph, "Attached hereto is the custody
15 evaluation report prepared in late 2013 by forensic
16 psychiatrist Dr. Christi Cooper-Lehki." And you
17 testified earlier a little bit about this, that you had
18 submitted her report to the FBI.

19 A. Yes.

20 (Deposition Exhibit No. 38 was marked for
21 identification.)

22 Q. All right, Mr. Ballock. You have been handed
23 what's been marked as Exhibit 38. This is the Second
24 Amended Complaint in this action, so not the current
25 version of the complaint. If you look at the top on the

1 header --

2 A. Yeah.

3 Q. -- you'll see the civil action number, the
4 docket number, and that this was filed on October 13th,
5 2017; do you see that?

6 A. Yes.

7 Q. Okay. So this was filed after your written
8 submission of June 14th, 2017; do you understand that?

9 A. Yes.

10 Q. Let's go to Paragraph 267. Back up a page,
11 please, to page 25 of the Second Amended Complaint.
12 Now, in your Second Amend Complaint as in your original
13 complaint, the First Amended Complaint, you have a
14 request for a declaratory judgment asking the Court to
15 unseal Dr. Cooper-Lehki's report for you to use with the
16 -- in connection with the disciplinary proceedings with
17 the FBI, but you had already had a copy of the report
18 and had already submitted it to the FBI at the time this
19 was filed. Why did you include this request for
20 declaratory judgment?

21 A. I had already submitted it to the FBI?

22 Q. Well, this is dated October 2017 and, according
23 to your submission in June 2017, you had submitted the
24 report to the FBI three months -- four months earlier.

25 A. Yeah. I wanted more than just the report. I

1 wanted her testimony -- transcript of her testimony.

2 Q. Well, in your request for declaratory judgment,
3 you never asked for the transcript of her testimony.

4 A. What did I ask for.

5 Q. The report.

6 A. The report.

7 Q. Let's go to Paragraph 267.

8 A. Yes.

9 Q. "At Costlow's request, the family court ordered
10 the copies of the custody evaluation report are to be
11 kept at Plaintiff and Defendant Costlow's attorneys'
12 office and that neither Costlow nor Plaintiff are to be
13 given an copy." How did you get a copy of the report?

14 A. Yeah. So, Costlow requested that nobody ever
15 be able to see this and the judge said I will give each
16 of your attorneys a copy and if you want to read it you
17 have to go to the attorney's office, you can read it
18 there, but you can't leave with a copy. Attorney, you
19 understand? Attorney, you understand? You guys all
20 understand? We all understand.

21 My attorney said do you want to come in and
22 read it. And I said, no, just tell me generally what it
23 says and if it's beneficial.

24 We had a family court hearing. Ellen was found
25 in contempt for something unrelated. And at the end of

1 the family court hearing, the judge gave me the
2 materials that Ellen had submitted to the judge in
3 support of her argument. When I got home -- I didn't
4 even look at them. When I got home I put them on the
5 countertop. And I was looking at them and, low and
6 behold, there's the report from Christi Cooper-Lehki.

7 Ellen had broken the seal and gotten a copy
8 from her attorney and provided it to the judge. I have
9 no idea how far and wide it's been disseminated, but
10 Ellen broke the seal. And my -- I told my attorney
11 about this. And I said I want to submit it to the FBI
12 because I think it might be helpful, but, you know, what
13 do you think.

14 And he said submit it. The most important
15 thing is to get your job back so go ahead and submit it.
16 So, upon advice of counsel, I submitted the copy that I
17 had not obtained but I had been given voluntarily by
18 Judge Minor. I imagine he didn't even read to see what
19 was in that stack of materials he gave me, that Ellen
20 had violated the court order and her attorney had
21 violated the court order by giving her a copy and
22 walking out of the office with it.

23 Q. When was this family court hearing where you
24 came upon the --

25 A. I don't know the date.

1 Q. Was it before or after the divorce was final?

2 A. It must have been before.

3 Q. Who was your attorney at that time?

4 A. Delby Pool.

5 Q. And she said go ahead and submit it?

6 A. Oh, sorry. No. Delby Pool was my divorce
7 attorney. Rick Junkness (ph) and Charles Crooks were my
8 attorneys at that time.

9 Q. Did you get authorization from the family court
10 to get a copy of the -- to release a copy of the report?

11 A. No.

12 Q. Go to Paragraph 281 of the complaint. In
13 Paragraph 281 you allege, "Costlow was able to do so."
14 By, doing so, referring back to the previous paragraph,
15 "to undertake actions to cause you problems with your
16 employer and provide false, defamatory, and manufactured
17 stories."

18 You -- in Paragraph 281 you say, "Costlow was
19 able to do so only because, by having the report sealed,
20 the true motives, intent, and mental illness of Costlow
21 would remain unpublished and unavailable for Ballock to
22 use in order to disprove and discredit her falsehoods."
23 That's not true, is it?

24 A. What do you mean?

25 Q. Well you alleged here that the report was

1 unavailable for you to use with your employer, but you
2 had used it four months earlier; correct?

3 A. She wanted it sealed so that it could not be
4 used by me as exculpatory evidence in the misdemeanor
5 case.

6 Q. But that wasn't true. It was available for you
7 to use?

8 A. No, it wasn't.

9 Q. How did you submit it to the FBI?

10 A. I just explained how I submitted it to the FBI.
11 That occurred after the judge denied its use in the
12 misdemeanor case.

13 Q. Right. And in your Second Amended Complaint
14 you're not talking about the misdemeanor case because it
15 had already been dismissed a year earlier. You're
16 talking about using it in connection with the FBI's
17 administrative investigation.

18 Paragraph 280, you talk about she undertook
19 actions to cause you problems with your employer and
20 provide false, defamatory, and manufactured stories to
21 your employer. And then you say in 281, she was only
22 able to do so because the report would remain
23 unpublished and unavailable for you to use. But you had
24 used it four months earlier; correct?

25 A. Yes, but I hadn't used it initially when the

1 agents came to interview me.

2 Q. In Paragraph 283, you allege that "The sealing
3 of the report likewise harmed Ballock and protected
4 Costlow by concealing the truth of the circumstances
5 regarding the divorce, the custody battle, the criminal
6 charges wrongfully sought by Costlow, and other personal
7 legal issues." That's not true either, is it?

8 A. No. It's true. I wasn't allowed to use it at
9 my misdemeanor trial.

10 Q. Mr. Ballock, this is not concerned with your
11 misdemeanor trial. At this point, the misdemeanor trial
12 has already been dismissed. This is in connection with
13 this litigation. You're requesting the United States
14 District Court to order the unsealing of that report for
15 you to use in connection with your employer and in
16 connection with this litigation.

17 A. I see. I see what you're saying.

18 Q. Paragraph 283 is not true; correct?

19 A. I had permission to -- by my attorneys to give
20 it to the FBI. I did not have permission to give it to
21 -- to submit it and use it for this matter. They
22 thought it would be wise to get that permission from the
23 judge.

24 Q. Well, you had actually, initially filed for
25 declaratory judgment in the initial complaint, in the

1 First Amended Complaint when you were pro se.

2 A. Uh-huh.

3 Q. Why did you file for a declaratory judgment in
4 those actions before? That couldn't have been based
5 upon advice of counsel because you were unrepresented at
6 that time; correct?

7 A. Right.

8 Q. So why did you request a declaratory judgment
9 unsealing the report then?

10 A. Oh. Oh, I see what you're saying. Because I
11 wanted permission to use it.

12 Q. Well, you had already used it without
13 permission.

14 A. Yes, and that was without permission. I wanted
15 permission to use it.

16 Q. When you allege in Paragraph 283 that the
17 sealing of the report harmed you, that's not true, is
18 it, because you were able to use it despite it being
19 sealed?

20 A. I was not able to provide it, and I did not
21 feel comfortable providing to the original agents who
22 conducted the investigation.

23 Q. When you say original agents, who are you
24 referring to?

25 A. The two agents who came out to interview me.

1 Q. In Paragraph 285 you allege that you were
2 unable to present the report to your children. That
3 also was not true, was it?

4 A. No, it's true.

5 Q. You had it available; correct?

6 A. Yeah.

7 Q. You had, obviously, shared it without the
8 family court's approval; correct?

9 A. Correct.

10 Q. Why couldn't you share it with your children?

11 A. Because, while I was okay giving it to my
12 employer, I was not okay giving it to the children.

13 Q. Have you shared the report or any of its
14 contents with your children?

15 A. No.

16 Q. Even though Judge Alois did grant this
17 declaratory judgment?

18 A. Yes. I've not shared it.

19 Q. The next page, Paragraph 289. "Plaintiff
20 Ballock seeks a declaratory judgment declaring his right
21 to obtain an unsealed copy of the report for use in
22 connection with his employer." Why were you seeking a
23 declaratory judgment to get a copy of the report for use
24 with your employer when you had already provided it to
25 the FBI?

1 A. Because I wanted it sanctioned by the judge.

2 Q. And you never mentioned anywhere in here that
3 you actually had already provided it to you employer?

4 A. Correct?

5 Q. Do you believe that was being candid with the
6 Court?

7 A. I don't -- I don't think it was a lack of
8 candor, no.

9 Q. Was it your belief that if the Court granted
10 this declaratory judgment that Dr. Cooper-Lehki's report
11 would be publicly accessible?

12 A. No.

13 Q. Did your father believe that if the Court
14 granted this declaratory judgment the report would be in
15 the public domain --

16 A. I don't know what my father believed.

17 Q. He never discussed it with you?

18 A. No.

19 Q. Do you have a copy of the transcript of
20 Dr. Cooper-Lehki's testimony in the family court
21 hearings?

22 A. I don't.

23 Q. Let's go back to your June 14th, 2017, written
24 statement. Let's go to page 6.

25 MR. CROOKS: I'm sorry. I didn't --

1 you're referring back to what?

2 MR. JEFFRIES: To the June 14th statement,
3 page 6.

4 MR. CROOKS: What's the exhibit number on
5 that.

6 MR. JEFFRIES: 37.

7 MR. CROOKS: 37. Okay.

8 BY MR. JEFFRIES:

9 Q. Are you on page 6, sir?

10 A. Yeah.

11 Q. There at the bottom -- bottom paragraph, second
12 sentence, "Senior Supervisory Agent John Hamrick, who
13 reviewed more than 60 percent of the communications" --
14 who is John Hamrick?

15 A. He was the guy who showed up at my arrest on
16 behalf of the agency, and he was the SSRA at Clarksburg.

17 Q. What was his involvement in your investigation?

18 A. I don't know specifically. He would have
19 reviewed the work of the agents.

20 Q. The investigating agents?

21 A. Yeah.

22 Q. When you say the agents, would that be the two
23 that you gave the sworn statement to in April?

24 A. Yes.

25 Q. Let's go to page 9 of your statement here.

1 Again, you have alluded to this before, but in the top
2 paragraph there it talks about Agent Hamrick attended
3 the arrest proceeding. So he was there at family court
4 when you came out?

5 A. Uh-huh.

6 Q. Verbal answer.

7 A. Yes. Sorry. Yes.

8 Q. Did he accompany you to magistrate court?

9 A. I don't know.

10 Q. He was just there on behalf of the agency to
11 observe?

12 A. Yes.

13 Q. There on the -- just under Item 5, under the
14 bold heading it says, Special Agent -- "Senior
15 Supervisory Agent Ballock was rated at the excellent
16 level from 2012 to 2015." So this would include after
17 your arrest in 2013 and while the charges were pending
18 in 2014 and '15?

19 A. Yes.

20 Q. I'm sorry?

21 A. Yes.

22 Q. And it goes on to say, "and he has earned two
23 cash awards." What is the basis for a cash award?

24 A. It varies, doing a special assignment, going
25 above and beyond, getting -- starting new projects.

1 Q. So it says you earned two cash awards, when did
2 you earn them?

3 A. I don't know.

4 Q. Did you earn them while the charges were
5 pending?

6 A. Yes.

7 Q. I'm sorry?

8 A. Yes, I believe so.

9 Q. And then it says that you received an Assistant
10 Director's award in 2016.

11 A. Yes.

12 Q. What is an Assistant Director's award?

13 A. They have an award ceremony every year at which
14 they pass out awards for different achievements and
15 accomplishments. I believe this was for my work with
16 N-DEEx. I don't even recall.

17 Q. So you received it in 2016, despite the fact
18 that the criminal charges were still pending at that
19 time?

20 A. Were they?

21 Q. Up until April.

22 A. Yeah, unless I got it after that -- after
23 April. I just don't remember.

24 Q. It says that your supervisor nominates you for
25 cash award this year, which would have been 2017 when

1 this letter was written, but it was denied due to this
2 administrative inquiry.

3 A. Yeah.

4 Q. How do you know that was the reason you didn't
5 receive a cash award?

6 A. Because after the cash awards were handed out
7 she came up to me and she said I put you in for a cash
8 award for your exemplary work, but they denied it
9 because of the inquiry, I'm so sorry.

10 Q. When you say she, Sue Barrow?

11 A. Sue Barrow.

12 Q. But, again, the reason for you not receiving it
13 was the FBI's administrative inquiry not the criminal
14 investigation that had already been dismissed a year
15 earlier?

16 A. Right.

17 (Deposition Exhibit No. 39 was marked for
18 identification.)

19 Q. Mr. Ballock, Exhibit 39 is the September 21st,
20 2017, letter from Assistant Director Candice Will
21 adopting the proposal that you be discharged from
22 employment. Again, can you show me anywhere in here
23 where a visit by anyone from the state police to the
24 Clarksburg Resident Agency is listed as a factor in the
25 FBI's decision?

1 A. No.

2 Q. Let's go to page 10 of this letter, just above
3 the heading Your Ex-Wife's Allegations, just above that.

4 A. Uh-huh.

5 Q. Assistant Director Will says, "Although you
6 have had an opportunity to review the file which along
7 with the OPR's proposal letter shows the state troopers
8 coordinated with the FBI regarding the arrest, your
9 filings in the civil suit" -- meaning this action here
10 -- "failed to disclose the efforts by the state police
11 to coordinate the arrest with the FBI and the legitimate
12 concerns shared by the state police and the FBI
13 regarding the need to ensure you were unarmed when
14 arrested to reduce the risk of violence."

15 Why did you omit that fairly important fact
16 from the complaints in this matter?

17 A. What important fact?

18 Q. That the state police had coordinated with the
19 FBI to arrest you at the family court proceedings and
20 that the FBI shared the state police's concerns.

21 A. I don't know that the FBI shared the state
22 police's concerns.

23 Q. You were told in the proposal letter that they
24 did, weren't you?

25 A. I was also told in the proposal letter that the

1 West Virginia State Police said that they investigated
2 the allegations against Chris Berry and found them to be
3 untrue when they were able to provide no confirmation
4 that they conducted an investigation.

5 Q. Do you have any reason to doubt that the state
6 police coordinated with the FBI as you were told in the
7 proposal letter?

8 A. No, I have reason to doubt that.

9 Q. So why wasn't that fact included in the
10 complaints in this matter?

11 A. Because that has nothing to do with them
12 falsely stating that their concern was that I would have
13 a gun on me, and that was demonstrated by the fact that
14 I walked into the detachment with my firearm. It was
15 all pretense.

16 Q. Let's go over to page 13. Actually, let's go
17 to -- I don't know how to say it. You skipped between
18 page 13 -- you'll see the next page is page 15. Page 14
19 is missing. Why didn't you produce that?

20 A. I didn't not produce it for any reason. I
21 didn't know it was not produced.

22 Q. Did your attorney ask you to produce it?

23 A. My attorney asked me to produce this document,
24 which I produced. I didn't know page 14 was missing.

25 Q. Go on to page 19.

1 MR. CROOKS: I don't think we have
2 page 14.

3 MR. JEFFRIES: What's that?

4 MR. CROOKS: I said I don't think we have
5 page 14.

6 BY MR. JEFFRIES:

7 Q. Mr. Ballock, do you have page 14?

8 A. I don't know. I'll have to look.

9 Q. Would you do that for me --

10 A. Of course.

11 Q. -- and supplement production? Let's go to
12 page 19 and the note at the bottom, Note 19. You are
13 admonished not to discuss this matter with anyone other
14 than certain agencies within the FBI or an attorney who
15 has signed the appropriate nondisclosure agreement.

16 But in both the Second Amended Complaint and
17 the Third Amended Complaint, the current complaint, you
18 did discuss that you were discharged, that is you
19 discussed this matter. Did you get authorization from
20 the FBI to discuss the discharge decision in your
21 pleadings?

22 A. No. My attorney's advice and my Washington,
23 D.C., attorney's advice was it's important for them to
24 have that information and, what are they going to do,
25 fire you.

1 (Deposition Exhibit No. 40 was marked for
2 identification.)

3 Q. Mr. Ballock, Exhibit 40 is the October 3rd,
4 2017 submission by the attorneys to the FBI's Office of
5 Disciplinary Appeals.

6 A. Yes.

7 Q. I'd like to go to page 7, which is
8 Bates-numbered PL 58 there in the lower right-hand
9 corner. That might be an easier way to find it.

10 A. Thank you.

11 Q. On page 7 going to page 8 you discuss some
12 strategies used by -- recommended by mental health
13 professionals to deal with people with borderline
14 personality disorder including the EAR and the JADE
15 techniques.

16 A. Uh-huh.

17 Q. Where did you learn these techniques?

18 A. In counseling.

19 Q. With whom?

20 A. A woman whose name I forgot and you said to me.

21 Q. Kathie Gieselman?

22 A. Gieselman, yeah.

23 Q. When was that?

24 A. That was before and after the separation, so
25 summer of 2012 into the fall of 2012, maybe.

1 Q. Why would Ms. Gieselman discuss strategies for
2 dealing with someone with borderline personality
3 disorder when Ellen wasn't diagnosed until 2013?

4 A. She wasn't diagnosed, you're right, but based
5 upon what I told her about Ellen and our relationship
6 and her behaviors, that was her guess as to what was
7 going on. She said she was at least a high conflict
8 personality and these sorts of methods were helpful.

9 Q. Okay. Let's turn the page to page 8, the
10 second full paragraph from the bottom, second sentence
11 -- I guess third sentence. You say, "Behind the scenes,
12 both police and prosecutors privately acknowledged to
13 your criminal attorney that they had erred in so quickly
14 pursuing criminal charges against you." Which police
15 officers told your attorney that?

16 A. I don't know.

17 Q. You were told that by Mike Benninger?

18 A. Mike Benninger.

19 Q. And he didn't tell you names?

20 A. No.

21 Q. Let's go to page 10, PL 61. The third
22 paragraph from the bottom, third-to-last sentence, "West
23 Virginia State Police Professional Standards Unit whose
24 mission is to investigate internal affairs and
25 complaints." Did you contact Professional Standards

1 regarding your allegations against Trooper Berry?

2 A. I did not. I assumed that Kief would have done
3 so.

4 Q. In the next paragraph down you state, "In
5 preparation for a civil lawsuit, Special Agent Ballock
6 submitted a FOIA request for information regarding any
7 such information into Trooper Berry and received no
8 response." We asked about this in our second set of
9 requests for production --

10 A. Yes.

11 Q. -- and we were told that you never submitted
12 any request?

13 A. Because I don't recall when I did it or how I
14 did it, and I don't have information about.

15 Q. Well, did you or did you not submit a FOIA
16 request?

17 A. I think I did, but I don't have a copy of it.
18 I didn't get anything back.

19 Q. So your answer -- your response to our request
20 for production that you never submitted one is not
21 correct?

22 A. No, I think I did. I'm fuzzy on that, but I
23 think I did.

24 Q. Okay. At the bottom of page 10, going over to
25 the next page, "It strains credulity to believe that the

1 West Virginia State Police could have conducted an
2 actual investigation into the matter without ever having
3 interviewed the very persons who made the allegation
4 regarding Trooper Berry in the first place," meaning you
5 and your father. That's not true, is it?

6 A. No. They didn't talk to us.

7 Q. Sergeant Kief spoke to both you and your father
8 about these allegations, didn't he?

9 A. Sergeant Kief listened to my father. Sergeant
10 Kief made a comment that there was no truth to it, but
11 he didn't investigate. He didn't ask questions. He
12 didn't ask for evidence. He didn't investigate.

13 Q. All right. Let's go on to the bottom of
14 page 11, talking about Kenny Ice. I mean, I think I
15 know the answer here, but I just want to confirm it.

16 A. Which PL number?

17 Q. PL 62?

18 A. Thank you.

19 Q. Again, you're referring to the information
20 about Trooper Berry supposedly having an affair with
21 Ellen. It says you "did not rely solely upon this
22 individual's information," meaning Kenny Ice, "but you
23 independently uncovered evidence regarding this
24 allegation." Again, you were referring to the --

25 A. Yeah, nothing that I'm withholding.

1 Q. -- call reports?

2 A. Yeah. Nothing that I'm withholding.

3 Q. You go on after another sentence, "The
4 individual," Kenny Ice, "voluntarily surrendered his
5 iPhone so that its contents could be downloaded and
6 reviewed. The recovered communications independently
7 corroborate most of what the individual attested to."
8 Would you agree with me that there's no mention of
9 Trooper Berry in the recovered communications from Kenny
10 Ice's cell phone?

11 A. Yes.

12 Q. Would you agree that there are no pictures of
13 Trooper Berry in the phone?

14 A. Yes.

15 Q. Would you agree there are no videos of Trooper
16 Berry in the phone?

17 A. Yes. Let me say that the forensic company
18 which did the examination said that it was only able to
19 retrieve some of the deleted materials. They could not
20 attest that everything that had been on there was still
21 on there or that they recovered. They did their best.

22 Q. Let's go to page PL 64.

23 A. Yes.

24 Q. At the top paragraph you state that the
25 Inspection's Division, Investigator Smith wrote that

1 there has been negligible reporting of your arrest.

2 A. Yes.

3 Q. Do you agree with that?

4 A. Yes.

5 Q. Let's go to page PL 76, the last page. I
6 notice that this written submission is signed by you,
7 while the previous ones were signed by your attorneys at
8 Swick and Shapiro. And also, the written submission
9 itself is not on Swick and Shapiro letterhead, although
10 the cover letter is from Swick and Shapiro. Did you
11 draft this yourself?

12 A. Yes, and Swick and Shapiro submitted it.

13 MR. JEFFRIES: Does anybody want to take a
14 break or are we good to press on? Are you good,
15 Mr. Ballock?

16 THE DEPONENT: I'm good. Yeah.

17 MR. CROOKS: Actually, I'm going to take
18 you up on the offer of a short break because I need to
19 make a phone call.

20 MR. JEFFRIES: Okay.

21 THE VIDEOGRAPHER: The time is 1446. We
22 are off the record.

23 (There was a short break in the
24 proceedings.)

25 THE VIDEOGRAPHER: We are back on the

1 record. The time is 1500.

2 (Deposition Exhibit No. 41 was marked for
3 identification.)

4 BY MR. JEFFRIES:

5 Q. Mr. Ballock, you have been handed during the
6 break Exhibit 41, which is your March 12th, 2018, sworn
7 statement to the FBI. I'd like to direct your attention
8 to page 4, Bates-numbered PL 132. In the top paragraph
9 there you say, "In an ongoing attempt to hold our
10 marriage together I did not object to having an open
11 marriage wherein Ellen dated other men." I mean, you
12 did more than merely not object, didn't you?

13 A. No, I did not object to it.

14 Q. You didn't enjoy seeing her with other men?

15 A. No.

16 Q. You didn't watch videos of her seeing other men
17 for your pleasure?

18 A. Not for my pleasure, no.

19 Q. Go to the next page. The first full paragraph,
20 third sentence you said, "I learned from counselors
21 that, had I immediately denied her aggressive and false
22 accusations, doing so would have escalated our
23 conflict." Which counselors told you that?

24 A. Gisela --

25 Q. Gieselman, Kathie Gieselman?

1 A. Yeah.

2 Q. Anyone else?

3 A. No. I better write that name down.

4 Q. Let's skip over two pages to page 7, PL 135.

5 The second full paragraph you say, "Prior to our
6 separation, I attended individual counseling during the
7 summer of 2012 with Kathie Gieselman," and learned
8 "various techniques for communicating with Ellen
9 including JADE." So you learned JADE from Kathie
10 Gieselman; is that correct?

11 A. Correct.

12 Q. At the bottom of the same paragraph you say
13 that your "choice not to contemporaneously deny Ellen's
14 false accusations was an attempt to abide by your
15 marriage counselor's recommended strategy to avoid
16 escalating an argument with Ellen." Which counselor was
17 that referring to?

18 A. Gieselman.

19 Q. Now Kathie wasn't your marriage counselor, was
20 she?

21 A. No. She was to be our marriage counselor.
22 Ellen wanted me to go first to individual counseling
23 sessions and then said after you're there for a while
24 then I'll come in.

25 Q. So you went to see Kathie Gieselman at Ellen's

1 request?

2 A. Yes. And she sent me with a list of things
3 that she wanted me to talk about. And they were all my
4 faults and things that weren't true. And she said I
5 want you to talk to her about these things.

6 And what I learned later -- what I surmised is
7 that she was -- because she was planning the divorce,
8 was that she was hoping that it would get on record with
9 Gieselman that I had engaged in wrongdoing.

10 And then when I would come home from the
11 counseling sessions, much as she did with our daughter,
12 she would demand to know what we talked about. Kathie
13 told me, no, you don't tell her what we talk about. And
14 that would send her into an eruption.

15 Q. So, in this statement where you say that the
16 choice not to deny her false accusations was based upon
17 marriage counselor's strategy that's an error --

18 A. Yeah. And, again --

19 Q. -- individual counselor?

20 A. Yeah. And, again, I didn't write this. The
21 agent wrote it.

22 Q. Understood. They typed it up and had you
23 review it and sign.

24 A. Yeah. And I may not have caught marriage.

25 Q. Okay. And on -- let's go to page 9, PL 137.

1 At the bottom of this page you talk about Special Agent
2 Garth referred to the original signed sworn statement
3 from back in 2016 where you stated that Dr. Cooper-Lehki
4 testified that Ellen was not abused. And you say, "I
5 agree a more accurate characterization of
6 Dr. Cooper-Lehki's testimony is that, in response to the
7 Court's inquiry, she found no evidence that I physically
8 abused Ellen Costlow." Why did you change your --

9 A. I didn't. He -- he thought that that was a
10 more accurate characterization of Dr. Cooper-Lehki's
11 testimony. I didn't go back and review it. But,
12 because he said that was a more accurate
13 characterization, I said fine.

14 Q. Okay. On the next paragraph down you discuss
15 an incident when you used your Glock 27 and inserted it
16 into Ellen during sex. When did this happen?

17 A. When we were in Ann Arbor, so prior to 2011.

18 Q. When did you move to Ann Arbor?

19 A. 2006.

20 Q. So between 2006 and 2011?

21 A. Yes.

22 Q. At the bottom of page, continuing to talk about
23 the incident with the gun. The second line from the
24 bottom you say, "Ellen had been diagnosed with a sex
25 disorder." What disorder was she diagnosed with?

1 A. She had been diagnosed with the sex disorder of
2 paraphilia.

3 Q. Who diagnosed her with that?

4 A. Christi Cooper-Lehki.

5 Q. Okay. Now, you're telling me that this
6 incident with the gun occurred between 2006 and 2011,
7 but Ellen wasn't diagnosed by Dr. Cooper-Lehki until
8 2013.

9 A. Yeah. And, again, I didn't write this.

10 Q. So just another error in the --

11 A. Yeah. This was -- if you want to obtain the
12 original, ask the FBI for it. There were so many things
13 that I -- I was embarrassed by how poorly written it
14 was. So this is one that I didn't catch either. I
15 marked it up a lot.

16 (Deposition Exhibit No. 42 was marked for
17 identification.)

18 Q. Exhibit 42 is your submission to the Office of
19 Professional Responsibility, January 8th of this year,
20 January 8th of 2019.

21 A. Yes.

22 Q. And, again, I notice no Swick and Shapiro
23 letterhead and on the last page it's signed by you. So,
24 you drafted this yourself?

25 A. Yes.

1 Q. Are you still represented by Swick and Shapiro
2 in the administrative proceedings?

3 A. I am. Katie Watson is her name.

4 Q. Why are you drafting things yourself instead of
5 your attorney? Any particular reason?

6 A. No reason. I know the story better.

7 Q. Let's go to page 6 of this submission?

8 A. PL?

9 Q. PL 179. I think we've discussed this, but I'd
10 just like to clarify. The third paragraph from the
11 bottom, about midway through you say, "Email
12 correspondence between Ellen and the West Virginia State
13 Police trooper obtained during the discovery phase of
14 Ballock's civil suit revealed that Costlow, with the
15 encouragement and support of a trooper friend who led
16 the misdemeanor investigation into Ballock, knowingly,
17 willingly, and eagerly violated both court orders."
18 What were you referring to there?

19 A. Where -- I told you where Kief said the FBI's
20 coming to see me, what do you want me to tell them.

21 Q. Okay. That's what I thought, but I wanted to
22 be clear.

23 A. Yeah.

24 Q. So you've already testified as to that
25 reference?

1 A. Yeah.

2 Q. Which court orders were you referring? You
3 said both court orders. Which --

4 A. Magistrate Mullins' court order and the divorce
5 court order in which Judge Minor admonished her not to
6 have any contact with the FBI.

7 Q. Was she told not to contact the FBI or not to
8 initiate contact with the FBI?

9 A. Much more specific. She was told not to have
10 any contact.

11 Q. So, is it your position that even if the FBI
12 contacted her and said we'd like to interview you, she
13 had to tell them no?

14 A. Of course. That was the intent. That was the
15 understanding. That was the agreement. No contact
16 means no contact.

17 Q. Let's go to the next page, PL 180.

18 A. Yeah.

19 Q. There under Ballock's Cousin. "Had OPR
20 conducted a thorough investigation and interviewed CCL,"
21 meaning Christi Cooper-Lehki, "perhaps it would have not
22 made the false and slanderous claim that Ballock had
23 knowledge of and complicity in the sexual abuse of a
24 minor. Ballock did not learn that Ellen had engaged in
25 sexual relations with Ballock's cousin until 16 years

1 after the fact." What were you referring to there?

2 A. I was referring to the time that Ellen had sex
3 with a cousin of mine who was 14 years old when she was
4 in college. And Jeff told me about it when he was 30
5 years old.

6 Q. So he was 14 at the time she had sex with him?

7 A. Yeah.

8 Q. How old was Ellen at the time?

9 A. She was in college. Again, she has a sexual
10 interest in young children. Christi Cooper-Lehki
11 determined that Ellen sexualized our young daughter, our
12 third-grade daughter.

13 (Deposition Exhibit No. 43 was marked for
14 identification.)

15 Q. Exhibit 43 is the family court order dated
16 September 20th, 2013, following the September 13th, 2013
17 hearing at which you were arrested.

18 A. Okay.

19 Q. Let's go to Paragraph 3j, which is on PL 293.

20 A. Okay.

21 Q. "The Court takes a jaundiced view of the
22 father's attempt to have the mother referred as a sexual
23 predator or other sexual offender based upon actions
24 occurring many years ago." Was Judge Minor referring to
25 this same incident with your cousin?

1 A. Yes.

2 Q. "In that regard, the Court notes the father had
3 knowledge of the incident at the time, he chose to stay
4 with the mother, he later started a family with the
5 mother, and he allowed her to be the primary caretaker
6 of the parties' children, and he apparently never raised
7 the issue in any regard until this litigation."

8 You would agree with me that there's a court
9 finding that you knew of the incident between Ellen and
10 your cousin at the time it occurred; correct?

11 A. I would agree with you that that's what the
12 Court said, but the Court was wrong, as it was in a lot
13 of other instances.

14 Christi Cooper-Lehki actually called Jeff and
15 interviewed him. And he shared with her that he didn't
16 tell me until he was 30. So I don't know why the Court
17 would have said that.

18 Q. What is the current status of your appeal of
19 your discharge from employment?

20 A. My case is now going before the Disciplinary
21 Review Board or DRB. It's comprised of agents and
22 support personnel, five -- five people, who will review
23 all the materials and either agree with or deny OPRs
24 decision.

25 Q. Any idea when you can expect a decision on

1 that?

2 A. No. They come from all over the United States
3 and so it's a coordination effort.

4 MR. JEFFRIES: We are almost done, or I'm
5 almost done, Mr. Ballock.

6 (Deposition Exhibit No. 44 was marked for
7 identification.)

8 MR. CROOKS: This is 44.

9 MR. JEFFRIES: Yes, sir.

10 MR. CROOKS: I want to make sure I haven't
11 lost the sequence.

12 BY MR. JEFFRIES:

13 Q. Mr. Ballock, Exhibit 44 are your supplemental
14 answers to our first set of interrogatories. Do you
15 recall seeing these interrogatories?

16 A. Yeah.

17 Q. Interrogatory Number 1 asks you to calculate
18 your damages. If you'll turn to page 2 and going on to
19 page 3, basically, from 2019 on, in calculating the
20 damages, there's a blurb each time that says does not
21 reflect income for holiday pay, typically more than
22 \$2,000 a year for Ballock. How is holiday pay
23 determined?

24 A. If an agent works on a holiday he receives
25 holiday pay, an increased level of pay. It's quite

1 significant.

2 Q. Is it time and half or is it something
3 different?

4 A. No, it's not -- we're not paid hourly. It's --
5 I don't know how they calculate it, but it's quite
6 generous.

7 Q. Did you get holiday pay every year?

8 A. Oh, yeah.

9 Q. What was the least amount you recall receiving?

10 A. \$2,000.

11 Q. What was the most you recall receiving?

12 A. Probably \$4,000.

13 Q. Go to page 5, if you will. You're still
14 discussing the economic losses that you're claiming.
15 About a third of the way from the bottom you discuss
16 "Losses resulting from need to list home for sale to
17 find employment, fees, and moving expenses." You had
18 moved out of the house at 51 Summit Overlook in
19 September 2012, the year before you were arrested;
20 correct?

21 A. In December -- wait, wait. Yes, but then I
22 went back to the home after the divorce. Does that make
23 sense?

24 Q. So were you awarded the home in the division of
25 the assets?

1 A. Yes. I bought her out.

2 Q. You bought Ellen out. Let's go to the next
3 page. At the top of the page you discuss emotional
4 distress damages. It says that you've had fear and
5 anxiety regarding the investigation related to the false
6 charges. Correct that you were diagnosed with an
7 anxiety disorder before your arrest; right?

8 A. Yeah.

9 Q. And didn't you report to Cheat Lake Physicians
10 in 2014 and 2015 when the charges were pending that you
11 were not suffering from any distress?

12 A. I may have.

13 Q. On Item G there you discuss necessary visits to
14 medical professionals who have prescribed multiple
15 medications to address the emotional trauma and distress
16 suffered by Ballock.

17 A. Uh-huh.

18 Q. What medications have you been prescribed as a
19 result of the arrest?

20 A. Wellbutrin -- I'm really bad with the names of
21 medicines -- Lexapro, clonazepam. If there are more
22 I'll tell you.

23 Q. Okay. Moving on to Interrogatory Number 2 it
24 asks you to list each and every person who you know to
25 have knowledge of any relevant fact. And then if you'll

1 skip on over to page 10 in your answer to this
2 interrogatory you identify Cindy Scott. You said,
3 "Ms. Scott will also be asked about her reasoning behind
4 her demand that Tom Ballock, a party unrelated to the
5 criminal case against you, take down a website in
6 exchange for her dropping the criminal case against
7 you." When did she make that demand?

8 A. Sometime when the case was pending she made
9 that demand.

10 Q. You can't recall what year?

11 A. No. She made that demand -- I spoke about it
12 earlier -- to Benninger.

13 Q. Just verbally to Mike? She didn't send him a
14 letter or email or anything?

15 A. I don't know about that. But he said, here's
16 the deal, they'll drop the case if you do this because
17 that's what Ellen is insisting.

18 Q. And I believe you testified earlier you don't
19 know which website she was wanting him to take down?

20 A. No.

21 Q. Going to page 13. We're still on
22 Interrogatory 2 asking about people who have knowledge
23 of any relevant fact. You identify your children.

24 A. Yes.

25 Q. Among the topics you say they have knowledge of

1 is "Costlow's relationship including with the West
2 Virginia State Troopers." What knowledge do they have
3 of their mother's relationship with my clients?

4 A. I don't know about your clients specifically.
5 In September 2017, Kenny Ice, Sr., arrived at my house
6 unannounced on his motorcycle to come talk to me. And
7 one of the things that he told me was that, in violation
8 of the family court order, Ellen had stalked down my
9 daughter who was with her friends in Fairmont at a place
10 called the Pokey Dot having ice cream. She stalked her
11 there, pulled her away from her friends and grilled her
12 about what was going on with me, asking if I was going
13 to get fired, telling her she had nothing to do with my
14 firing, telling her that I am a dangerous man, that she
15 is in very great danger, Daddy's going to hurt you,
16 you're 14 now, you can make a decision to come live with
17 me, all you need to do is go tell somebody, if you
18 don't, Daddy's going to hurt you over and over again.

19 During the course of that conversation she also
20 told Summer, but my West Virginia friends are watching
21 out for you -- well, West Virginia State Trooper friends
22 are watching out for you, they're watching over you,
23 they'll protect you. So I don't know what that means,
24 and I don't know if it's these guys or somebody else
25 who's watching over me.

1 Q. Could it be that Ellen was lying about that?

2 A. Sure.

3 Q. Go to page 28.

4 A. I also have that -- I believe I have that --
5 'cause then Ellen engaged in some text conversations
6 with Summer saying those same sorts of things, and
7 Summer captured those text messages. I think I have
8 those.

9 Q. Have you produced those?

10 A. No, because I just now thought of it, but I
11 will look for it.

12 Q. Okay. Page 28, you'll see Interrogatory 12
13 asking to identify all facts and witnesses that support
14 your contention that Trooper Berry was having an affair
15 with Ellen. If you go on to the next page --

16 A. Yes.

17 Q. At the top of the next page you say, "Email
18 correspondence between Berry and Costlow likewise
19 provide circumstantial evidence supporting an affair."
20 What email correspondence between Trooper Berry and
21 Ellen were you referring to?

22 A. Is that my response?

23 Q. That is your response.

24 A. I don't have any email correspondence between
25 Berry and Costlow.

1 Q. Skip down to the third paragraph. You say,
2 "The conduct of Berry is likewise evidence of an affair
3 given the knowingly unjustified actions taken on behalf
4 of Costlow at her request." What actions of Berry were
5 you referring to? What conduct?

6 A. Where he was, according to Kenny, surveilling
7 me and my parents. I was living at -- on New Castle
8 Lane at the time.

9 Q. That was where you moved to after you moved out
10 of the house at 51 Summit Overlook?

11 A. That was my second destination, yes.

12 Q. Where did you move to first?

13 A. To an apartment in downtown Morgantown.

14 Q. But you don't recall where?

15 A. No. I mean, I know where it is, but I couldn't
16 tell you the address off the top of my head.

17 Q. Anything else besides the alleged surveillance?

18 A. Let me go back to it.

19 MR. CROOKS: Could you repeat that
20 question?

21 Q. Anything else besides the alleged surveillance
22 by Trooper Berry.

23 A. The statements that she made to the deputies
24 who arrived on the scene giving the conflicting
25 information.

1 Q. Well, I think you might discuss that down here
2 later. But I'm asking specifically about conduct of
3 Berry, things he did.

4 A. No. Oh, I see what you're saying. Sorry. No.

5 Q. Then you go on, "Likewise, the willingness of
6 the West Virginia State Police to do as Costlow
7 requested is evidence that she more likely than not was
8 involved in a sexual relationship with Berry." What did
9 they do that she requested?

10 A. I believe that she had an involvement in the
11 timing of the arrest and the place of the arrest. Like
12 I said earlier, she was essentially Kief's supervisor
13 during his investigation into me after the -- well, but
14 that was after -- after the dismissal.

15 Q. And then you discuss a decision not to write a
16 "domestic disturbance report involving Costlow and Ice
17 in violation of policy requiring a report and arrest at
18 the scene of a violent domestic disturbance where a
19 minor child is present." I'd like to break that down
20 just a little bit.

21 A. Uh-huh.

22 Q. Are you referring to that March 6th, 2012
23 domestic violence call --

24 A. Yes.

25 Q. -- that you asked Sergeant Kief about?

1 A. Yes.

2 Q. What policy did they violate?

3 A. I can't cite it to you right now.

4 Q. Then how do you know that they violated one?

5 A. Because -- I would have to re-read the policy
6 where I got that from.

7 Q. Now, you've produced the 911 call record of
8 that incident.

9 A. Have I?

10 Q. Yes.

11 A. Okay.

12 Q. Was there any violence reflected in the 911
13 call record?

14 A. There was window smashing. There was a gun
15 involved. I don't remember -- was that when Kenny was
16 stabbed or was that the other time? I just recall that
17 it was a violent episode. And Kenny told me that it was
18 violent as well.

19 Q. And you don't know if Trooper Berry was
20 allegedly involved with Ellen at that time?

21 A. No, I have no idea.

22 Q. Okay. Moving on down, Interrogatory 13 asks
23 you to identify all facts and witnesses that support
24 your allegation that Trooper Berry conducted
25 surveillance of you and your parents. And in your

1 answer you identify some evidence and some possible
2 witnesses. Among the witnesses, you list Tom Ballock.
3 What does your dad know about the surveillance that was
4 allegedly being conducted?

5 A. Like I said, he was alleged to have conducted
6 surveillance of both me and my father. My father,
7 looking back on it, thought that he was being
8 surveilled, but he can't say for sure if it was Berry.

9 (Deposition Exhibit No. 45 was marked for
10 identification.)

11 Q. All right, Mr. Ballock. We're up to
12 Exhibit 45. These are your responses to our requests
13 for production. I'd like to take you over to page 6.
14 Request Number 18 is for all documents relating to any
15 "negative repercussions you suffered at your employment
16 including but not limited to all documents that refer to
17 or relate to your termination from employment."

18 And the response was, other than an objection
19 on vagueness, "Plaintiff will work with counsel for
20 defendants to identify and produce responsive documents,
21 if any, to the extent not already produced." Now, you
22 already had all these documents from the FBI at this
23 time, didn't you?

24 A. When was this?

25 Q. This was May -- signed May 21st, 2018.

1 A. Yes, I would have.

2 Q. Why didn't you produce them?

3 A. Because there was a lot of discussion about
4 whether I could or whether I should because I was
5 admonished by the OPR not to share it with anybody.

6 Q. Why didn't you put in your response that I have
7 documents but I can't produce them because of a
8 confidentiality agreement with the FBI?

9 A. I don't know. Rick wrote this.

10 (Deposition Exhibit No. 46 was marked for
11 identification.)

12 Q. Exhibit 46 is a record from -- if you look in
13 the upper right-hand corner, you'll see the encounter
14 date July 19th, 2012, when you went to see Erika Pallie
15 at Cheat Lake Physicians?

16 A. Yes.

17 Q. Go to page 900, under HPI, which I'll represent
18 to you I believe stands for History of Present Illness.
19 In the second paragraph, Dr. Pallie notes the patient
20 has a lifelong history of facial ticks which reportedly
21 run in the family; is that correct?

22 A. Yes.

23 Q. She goes on to state that he had once been
24 prescribed Klonopin; is that correct?

25 A. Correct.

1 Q. What were you prescribed Klonopin for?

2 A. The ticks.

3 Q. And then she goes on and states, "Now taking
4 Wellbutrin." So you were taking a --

5 A. Antidepressant.

6 Q. In July of 2012?

7 A. Yeah.

8 (Deposition Exhibit No. 47 was marked for
9 identification.)

10 Q. Mr. Ballock, Exhibit 47 is, I'll represent to
11 you, the entirety of the records that we received from
12 Kathie Gieselman. And I'm a little confused, and maybe
13 you can help me out. We got these from Twin Cities
14 Therapy in Minnesota. Was she in Minnesota when you
15 were seeing her?

16 A. No. She transferred there.

17 Q. Where was she when you saw her?

18 A. In a little town south of Clarksburg. I don't
19 recall.

20 Q. Let's go to page 888.

21 A. Page?

22 Q. 888.

23 A. 888.

24 Q. This is a record from September 4th, 2012. Do
25 you see that in the upper right-hand corner?

1 A. Yes.

2 Q. Down in the narrative it says, "He reports that
3 his wife 'is smart,'" end quote, "and has 'threatened
4 several things,'" end quote, "that could potentially
5 cost him his job at FBI." What had she threatened you
6 with -- let me back up. This was before you separated,
7 September 4th, 2012; correct?

8 A. Yes.

9 Q. What did Ellen threaten you with at that point?

10 A. Oh, Ellen -- Ellen was always making threats
11 like that. Whenever we would have a discussion or --
12 sorry, discussion -- an argument and she would start to
13 feel like she was losing, her standard go-to was to do
14 this, oh, my neck, oh, my neck, you just hit me in the
15 neck, I'm going to have to call 911 and tell them that
16 you abused me and then you're going to lose your job.
17 And that's when I would go sleep in my car.

18 Q. That's what you were referring to --

19 A. That's one of the things I was referring to.

20 Q. What else were you referring to?

21 A. All sorts of activities like that. She just
22 wanted me -- she threatened me with my job. I spoke
23 with Agent Steve Secore (ph) when we were in
24 Indianapolis as partners at that time about how Ellen,
25 when we would fight, would threaten to go to the FBI and

1 tell them false things so that I would lose my job.
2 That's her pattern.

3 Q. You said Steve Secore was when you were in
4 Indianapolis?

5 A. Indianapolis.

6 Q. Let's go to the next page, 889. This was a
7 visit on October 3rd, 2012. In the very last sentence
8 Ms. Gieselmann notes, "He will call," meaning you, "will
9 call tomorrow to set up more appointments." Did you
10 ever call to set up any more appointments?

11 A. I don't remember. She ultimately left and went
12 to Minnesota.

13 Q. Is that why you quit seeing her?

14 A. Perhaps. Again, I wanted to do marriage
15 counseling and that was the intent. And Ellen had said
16 she wasn't going to.

17 Q. Do you recall seeing Kathie after October 3rd,
18 2012?

19 A. No.

20 Q. This was the only session you had with her
21 after the separation?

22 A. Probably.

23 (Deposition Exhibit No. 48 was marked for
24 identification.)

25 Q. Exhibit 48, if you'll look in the upper

1 right-hand corner, is a visit at Cheat Lake Physicians
2 on October 24th, 2012. Do you see that?

3 A. Yeah.

4 Q. Again, with Dr. Erika Pallie. And in the
5 subjective component she notes in the second line, "I
6 have given him Paxil to help with his anxiety." Is that
7 correct that you had received Paxil --

8 A. Yes.

9 Q. -- at least as of October 2012?

10 A. Yes.

11 Q. For anxiety?

12 A. Yes.

13 (Deposition Exhibit No. 49 was marked for
14 identification.)

15 Q. Exhibit 49 is another progress note from Cheat
16 Lake Physicians dated October 15th, 2013. Just to kind
17 of put things in perspective this would have been a
18 month after you were arrested, approximately.

19 A. Okay.

20 Q. Under the subjective paragraph it discusses you
21 have undergone a very difficult divorce and there's a
22 lot of discord between him and his ex-wife. "He is
23 currently caring for his two children. He has full
24 custody and also works full-time at the FBI." It
25 discusses difficulty sleeping due to stress and anxiety,

1 has been prescribed lorazepam in the past which helped.
2 And then, at the very bottom of this paragraph, "No
3 other acute issues or concerns today."

4 So it discusses your divorce, caring for the
5 children, working full-time, no mention of the arrest.
6 Is that correct that you didn't discuss the arrest with
7 your doctor then?

8 A. Correct.

9 Q. And it's also correct that you were prescribed
10 lorazepam -- if you go down to Assessment Plan Number 3,
11 Anxiety, it says, that they renewed your Paxil and
12 Wellbutrin and gave you a prescription for lorazepam.
13 So you were prescribed lorazepam for anxiety in October
14 2013?

15 A. Yeah.

16 Q. Are you still taking it?

17 A. No.

18 Q. When did you quit taking it?

19 A. I couldn't tell you, but it made me feel like a
20 zombie.

21 Q. Was it before or after the charges were
22 dismissed?

23 A. I don't know. I have so many medications, I
24 don't know.

25 Q. How about the Paxil? Do you still take it?

1 A. No.

2 Q. When did you quit taking it?

3 A. We replaced that with Lexapro, and that would
4 have been last year, I guess.

5 Q. So Lexapro is another antidepressant?

6 A. Yes.

7 Q. You believe that was in 2018?

8 A. Yes.

9 Q. How about the Wellbutrin? Do you still take
10 it?

11 A. Yes. It's been increased.

12 (Deposition Exhibit No. 50 was marked for
13 identification.)

14 Q. Exhibit 50, Mr. Ballock, is the records from
15 Fremouw-Sigley Psychological Associates. And, I'll be
16 honest with you, they're very difficult to read. I will
17 translate as best I can. And if you think it says
18 something different, you let me know.

19 Initially, going to Fremouw-Sigley, this was
20 court-ordered joint counseling; is that correct?

21 A. Correct.

22 Q. Was Ellen at all the sessions?

23 A. No. She stopped going.

24 Q. Up until she quit going altogether, did she
25 miss any sessions?

1 A. No.

2 Q. Let's go to page 1161. Upper left-hand corner,
3 date November 5th, 2013. Assessment of current
4 functioning, patient name is you.

5 A. Okay.

6 Q. It says, "He's okay. Denied any current" -- it
7 looks like stressors to me. Do you think that that was
8 correct, that you were okay in November 2013?

9 A. On that day I was.

10 Q. Now, below that is a progress note for
11 November 22nd, 2013. Under type of session they've
12 circled family.

13 A. Okay.

14 Q. And then down under Present in Session it says,
15 "With Ellen." So this was a joint session.

16 A. Okay.

17 Q. Now I'd like to refer you back to your
18 timeline, if I can find my copy. Here we go. If you
19 look on your timeline for November 22nd, 2013 --

20 A. Go ahead.

21 Q. It discusses -- I'll give you a minute to find
22 it.

23 A. Got it.

24 Q. It's page 15.

25 A. Yes.

1 Q. At the very bottom it discusses 11/22/13, you
2 and Ellen attended the second joint counseling session.
3 And if you go over to the next page you discuss that
4 during the session, although it's not reflected in the
5 progress notes, you state that during this session Ellen
6 said that everyday during the summer of 2013 she dressed
7 nicely and had the house clean anticipating that FBI
8 agents would be arresting her for stealing FBI-issued
9 property.

10 Is there anything unreasonable about her
11 preparing to be arrested, given that you had threatened
12 several times in May 2013 to have her charged with a
13 felony count?

14 A. I never threatened her. I told her that this
15 is what she had done and she needs to not do that. So I
16 take umbrage with that characterization. I did not
17 threaten her.

18 Q. Telling her that she violated the law, citing
19 the law, telling her it's a serious offense and that it
20 will be dealt with immediately is not threatening in
21 your mind?

22 A. No. She committed the crime.

23 Q. Okay. All right. Since leaving the FBI. You
24 got a job at Kroger in December 2017, I believe?

25 A. Yes.

1 Q. Are you still working there?

2 A. Yes.

3 Q. What is your position?

4 A. Operations manager.

5 Q. What is your current salary?

6 A. \$55,000.

7 Q. I understand from your discovery responses
8 you're eligible for a bonus?

9 A. Correct.

10 Q. What determines that eligibility?

11 A. Factors beyond my control, sales, customer
12 feedback, EBITA.

13 Q. What's that?

14 A. Earnings before interest, taxes, and
15 amortization. It's a calculation. The amount of shrink
16 that the store suffers, retention rates. A whole lot of
17 factors go into deciding the bonus, all things that the
18 company wants us to accomplish.

19 Q. Did you receive a bonus for 2018?

20 A. I did.

21 Q. How much?

22 A. It was 49 percent of \$5,000. We were given a
23 49 percent bonus, so whatever that comes out to.

24 Q. Just under \$2,500 by my math.

25 A. Okay.

1 Q. Do you have benefits through Kroger?

2 A. Yes, insurance.

3 Q. Do you have health insurance?

4 A. I do.

5 Q. How much do you pay for your premium?

6 A. I'd have to look.

7 Q. How much does your employer pay?

8 A. I'd have to look.

9 Q. What about dental insurance?

10 A. I do.

11 Q. Do you know how much either you or employer pay
12 for the premium?

13 A. I don't.

14 Q. Vision insurance?

15 A. I do.

16 Q. Do you know the premiums?

17 A. I don't.

18 Q. How about vacation?

19 A. Three weeks a year of vacation.

20 Q. How about any pension or a 401k plan?

21 A. No pension. I have the ability to contribute
22 to a 401k, but I don't.

23 Q. Why don't you?

24 A. Because I don't have enough income to meet my
25 monthly expenses.

1 Q. Does your employer contribute to the 401k?

2 A. Only matching.

3 Q. So zero for now?

4 A. Yeah.

5 Q. Do you receive child support?

6 A. Yes.

7 Q. How much?

8 A. \$508 a month, maybe.

9 Q. Have you looked for other employment since
10 getting your job at Kroger?

11 A. Yes.

12 Q. Where have you looked?

13 A. Various places all around in Indianapolis.

14 Q. Have you been offered any jobs?

15 A. No.

16 Q. What were your attorney fees from the divorce?

17 A. Oh, gosh tens of thousands. I don't know the
18 exact number.

19 Q. Less than \$100,000?

20 A. Probably.

21 Q. Would you say it was more than \$50,000?

22 A. Could have been.

23 Q. Do you have any idea?

24 A. I don't.

25 Q. Okay. So it could be anywhere between \$10,000

1 and \$99,000?

2 A. Sure.

3 Q. Are your attorney fees from the divorce paid
4 off?

5 A. Yes.

6 Q. How about your attorney fees from the criminal
7 prosecution?

8 A. I've paid Charles some amount to get me through
9 the dismissal phase. He's now --

10 MR. CROOKS: He's talking about the
11 criminal case.

12 A. Oh, criminal case. I want to say \$5,000.

13 Q. And then, what are your attorney fees thus far
14 in this action?

15 A. Rick represented me for nothing. He's a friend
16 of the family. Charles I've paid -- I paid money to get
17 me through the dismissal phase. And now he's
18 representing me on a contingency basis.

19 Q. How much did you pay to get through the
20 dismissal phase?

21 A. I don't know.

22 Q. Okay.

23 A. I can get you that.

24 MR. JEFFRIES: That's all that I've got,
25 Mr. Ballock. I'm going to turn you over to --

1 THE DEPONENT: Can we take a bathroom
2 break?

3 MR. JEFFRIES: Actually, let me -- before
4 I hand you over. Let me take a break, consult, and
5 there may be another follow-up question or two.

6 THE VIDEOGRAPHER: The time is 1545. We
7 are off the record.

8 (There was a short break in the
9 proceedings.)

10 THE VIDEOGRAPHER: We are back on the
11 record. The time is 1558.

12 MR. JEFFRIES: Mr. Ballock, I have no
13 further questions. I'll let Mr. Phillips ask you some.

14 MR. PHILLIPS: Okay. We met, Mr. Ballock.
15 I'm Todd Phillips. I represent Ellen in this matter.

16 Can you hear me okay?

17 (The videographer nods.)

18 CROSS-EXAMINATION

19 BY MR. PHILLIPS:

20 Q. Okay. Let's start first, I believe you
21 testified early on and several times in questions from
22 Mr. Jeffries that most everything you did was for the
23 benefit of your children, including emails you sent to
24 Ellen?

25 A. Yes.

1 Q. Okay. Did you emotionally neglect Ellen for
2 the benefit of your children?

3 A. No. No, I didn't.

4 Q. Okay.

5 A. I emotionally neglected her partly because I
6 spent so much time with the children.

7 Q. Okay. All things considered, the emotional
8 neglect was not a benefit to the children?

9 A. All things considered, the emotional neglect
10 was a bad thing for Ellen, me, our marriage, and
11 ultimately for the children. Sure.

12 Q. Okay.

13 A. My point is that I never physically harmed
14 Ellen. I've never physically harmed anyone.

15 Q. Okay. That wasn't the question. So I guess
16 it's fair to say all things you did not benefit the
17 children; is that accurate?

18 A. Sure. Staying out late for work did not
19 benefit the children. There are lots of things that
20 I've done that haven't benefited the children.

21 Q. Go back to Exhibit 3. Let me find it. I
22 believe it's in here. You state that you're ashamed of
23 your past.

24 A. Okay.

25 Q. And that what -- I want to ask about that.

1 What were you ashamed of?

2 A. What we have been talking about. I'm ashamed
3 that I forgot about Ellen.

4 Q. Okay. And going to the Sean Matthews persona
5 or alter ego. Did you -- did you spell that S-e-a-n?

6 A. Yes, I think so. Yes.

7 Q. Okay. When did -- approximately, when did you
8 start going online as Sean Matthews?

9 A. Probably about 2007.

10 Q. Okay. And that lasted until?

11 A. Until we left Ann Arbor in 2011.

12 Q. Okay. And you used that identity on
13 Craigslist?

14 A. Yes.

15 Q. And what other -- any other sites?

16 A. No.

17 Q. And you spoke with -- spoke with Ellen. Did
18 you exchange communications with anyone else as Sean
19 Matthews?

20 A. No.

21 Q. Have you ever used the Sean Matthews identity
22 in anything else?

23 A. Yes. Actually, that was my undercover alias
24 for the bureau.

25 Q. Okay. And the communications you would have

1 with -- were you using Sean Matthews with any
2 bureau-related matters between 2007 to 2011?

3 A. I really never had to use that. No.

4 Q. Not during that time period?

5 A. Huh-uh.

6 Q. Had you used it before 2007 with the bureau --

7 A. No. I only had it while I was in Ann Arbor,
8 but never did actually ever have to pull it out or use
9 it.

10 Q. Okay. I'm a little -- maybe you can explain
11 that to me. How did you have this identity and not use
12 it?

13 A. I had it in the event that I needed to use it,
14 in case I needed to use it for whatever reason, but I
15 never did. There was never an occasion in which I was
16 required or needed to present that identification or any
17 such thing.

18 Q. Okay. For identification, did you have any
19 forms of ID identifying you as Sean Matthews?

20 A. Yes, I had a driver's license and a credit card
21 in the name of Sean Matthews.

22 Q. Okay. And then the --

23 A. So, when creating the Craigslist account, I
24 just naturally went to that.

25 Q. Uh-huh. Okay. And during this time that you

1 pretended to be Sean Matthews did you send Ellen any
2 communications on FBI --

3 A. Oh, god, no.

4 Q. No? Didn't use FBI computer or cell phone?

5 A. No way.

6 Q. Okay. Any communications while you were --
7 during working hours?

8 A. No way.

9 Q. Okay. I believe in reference to questions you
10 were asked about Exhibit 20, I believe -- I believe -- I
11 think in response to questions there you, again,
12 indicated as you have several times about not being --
13 not providing emotionally for Ellen, and you said that
14 Ellen lived a fabulous life, that --

15 A. A spoiled life.

16 Q. Okay. Spoiled. That's -- so you were
17 referring to material provisions?

18 A. She couldn't get out of bed in the morning so I
19 would drive the children to work -- to work, to school
20 -- then come back to get my bureau car to go to work.
21 When I came home I would stop at a cafe to buy dinner
22 pre-made. I would do the dishes. I would play with the
23 kids. I read them nighttime stories. I bathed them. I
24 put them to bed.

25 Even though she had no job and nothing to do

1 all day, I hired her a housekeeper because she couldn't
2 find the energy to keep house. I took her on vacations
3 throughout the year, both on the government -- when I
4 would travel for government and otherwise.

5 I bought her material things. We lived in a
6 4,800 square foot -- 4,600 square foot house here in
7 West Virginia because she insisted on it. She -- the
8 kids and I made her breakfast in bed every Saturday
9 morning. I can share some pictures with you of that.
10 She was spoiled.

11 Q. Okay. So that -- so that's what you meant by a
12 fabulous life?

13 A. She spent her days however she wanted to. I
14 gave her the credit card, and I said to her all -- my
15 only expectation is that you don't spend more money than
16 we have coming in.

17 Q. All right. But you acknowledge you didn't
18 provide emotionally, you didn't provide sexually either?

19 A. That's true.

20 Q. Yeah. Okay.

21 A. Yeah, my energies were -- and I regret it. My
22 energies were focused on my career and the children.
23 Ellen never wanted to have children. And when my sister
24 had children, I said I want one of those and so we're
25 either going to have to separate or you're going to have

1 to give me a child. And it was a very bad decision
2 because she resented those children.

3 Q. But you had difficulty performing sexually?

4 A. Yes.

5 Q. And that's -- I saw, I believe it was in
6 Exhibit 45, that you were prescribed Paxil to help with
7 that?

8 A. Yes.

9 Q. And watching the videos could help you?

10 A. No.

11 Q. No?

12 A. Not at all. It wasn't a matter of getting
13 erect. My issue was premature ejaculation. And that's
14 one reason Ellen told me why she was fooling around on
15 me and leaving me.

16 Q. Exhibit 48, you were prescribed Paxil for
17 sexual dysfunction. Okay. That was October 24th of
18 2012. How long before that date were you prescribed
19 Paxil for premature ejaculation?

20 A. I think that was then.

21 Q. That was the first time?

22 A. Yeah. She -- she was there at the doctor's
23 appointment with Erika Pallie.

24 Q. Okay.

25 A. And we talked about it with her. And it was

1 her -- at her suggestion and request that we bring it up
2 with Erika.

3 Q. Okay. It says the -- the report by Dr. Pallie
4 said she had given you Paxil to help with anxiety and to
5 help premature ejaculation. That worked, but he stopped
6 taking it and he needs refills, so it seems to indicate
7 that was before October of 2012.

8 A. Perhaps.

9 Q. And --

10 A. Perhaps.

11 Q. I guess you did stop taking it then or at some
12 point?

13 A. Yes. Yes. I didn't like the side effects.

14 Q. Okay. Then I believe in talking about your
15 financial situation, in responding to Exhibit 23, you
16 noted a loss of hundreds of thousands of dollars and
17 this was causing problems in your marriage. How many
18 hundreds of thousands?

19 A. Can you please...

20 Q. That was not referenced in the -- let me take a
21 look at -- it was in reference to questions related to
22 Exhibit 23.

23 A. What did I say?

24 Q. You stated that -- well, that -- I believe it
25 was in reference to you had said that things were tough

1 so you had -- with the impending dissolution of the
2 marriage and that -- I believe Mr. Jeffries had asked
3 you, you know, just because things are tough that
4 doesn't excuse criminal behavior and you agreed. And
5 some of things that you listed as making your life
6 difficult at the time, one of those was financially you
7 said that --

8 A. Yes.

9 Q. -- during the marriage, you and Ellen had lost
10 hundreds of thousands of dollars at that point. And I'm
11 just wanting to know how many hundred?

12 A. Oh, gosh. I don't know. The guardian ad litem
13 cost us tens of thousands of dollars. Christi
14 Cooper-Lehki's bill was around \$50,000. Ellen, for
15 whatever reason, decided she needed three attorneys to
16 handle her divorce. They were all three getting paid by
17 me. You name it.

18 Q. Okay.

19 A. We had \$127,000 set aside for the children's
20 education. And when she kicked me out of the house, she
21 went to the bank -- it was in a joint account, and
22 removed it all. And then, later, when the judge asked
23 her where it went, she couldn't explain it, but she had
24 spent all of it except \$30,000. She was buying gifts
25 for Kenny and -- expensive gifts. And she was using

1 narcotics. So I don't know where all the money went.
2 Kenny said they liked to go to strip clubs together a
3 lot. I don't know, but my children's college education
4 fund was wiped out by her.

5 Q. Okay. That kind of explains it. You had a lot
6 of money depleted, a lot of money-related -- it was an
7 expensive divorce for --

8 A. Yes, even though she has a master's degree and
9 could have found a job for two years during the pendency
10 if the divorce, she sat at home and did nothing,
11 couldn't get our daughter to school. And I was paying
12 the mortgage and giving her \$2,000 a month cash, paying
13 for our children's private schooling. And she did
14 nothing. I went through a lot, a lot of money.

15 She -- right before she separated from me -- I
16 don't think it's a coincidence. Right before she
17 separated from me, she went out and she bought a \$60,000
18 SUV and paid cash for it. She went through our money.
19 It was a very traumatic, very stressful time.

20 Q. You mentioned about her not getting work. I
21 mean, you threatened to sabotage work efforts.

22 A. I threatened to sabotage work efforts?

23 Q. In Exhibit 24, you indicated that you'd go to
24 the licensing board to prevent any attempt of her
25 becoming a nurse.

1 A. Oh, yeah. She has a -- she has a sexual
2 problem, paraphilia. She has a desire to have sex with
3 unconsenting beings, and she has expressed fantasies
4 about molesting incapacitated patients in her writings
5 to Sean Matthews. And I wasn't about to let her do
6 that. Although I tried to get her a job at the FBI
7 because it would have been nice for her to work.

8 Q. Did you ever contact an employer, prospective
9 employer, or licensing board?

10 A. No.

11 Q. Did your father or anyone else --

12 A. Not that --

13 Q. -- in your close family do that to your
14 knowledge?

15 A. Not that I'm aware of.

16 Q. Okay. Do you think that's possible that's
17 something that your father would do?

18 A. I wouldn't put it past him. My father and I
19 have a strained and different relationship, so I don't
20 know what he's doing.

21 Q. Okay. Let me talk about -- go back to when you
22 were arraigned in magistrate court after being arrested,
23 and Mike Benninger might have been with you or another
24 attorney.

25 A. Maybe.

1 Q. Probably not Delby Pool because she's a family
2 court attorney; is that right?

3 A. Maybe she went up with me because she was at
4 least an attorney. I just don't remember who was in
5 that room. I couldn't tell you.

6 Q. Okay. I believe you said the -- I believe you
7 testified the whole procedure from being arrested, let
8 out of family court, going to magistrate court, and then
9 back to family court only took 15 to 20 minutes?

10 A. Yeah. That's my best guess.

11 Q. Yeah. And you weren't aware of an impending
12 arrest at the time of the September 13th, 2012 hearing?

13 A. No. It was a shock to me.

14 Q. Okay.

15 A. And when it happened, Ellen looked over and
16 gave me a great big smile.

17 Q. Did you -- but had you been in touch with --
18 retained Mr. Benninger prior to that time or another
19 attorney?

20 A. Yes.

21 Q. Okay. What had he been retained for?

22 A. My father -- the website you're talking about,
23 he created a website and Ellen filed suit against him.
24 And she named me as well, even though I had nothing to
25 do with it. And so, I retained Benninger.

1 Q. Okay.

2 A. Ellen, when asked to provide discovery
3 materials initiated a settlement. And the settlement
4 was we just all go our separate ways, nothing happens,
5 nothing changes. But she didn't want to answer
6 questions in deposition.

7 Q. Okay. So he was your civil attorney?

8 A. Yes.

9 Q. I believe you testified at the time you were
10 eager to get out of the Clarksburg area. You were
11 looking for a transfer with the FBI?

12 A. Yes.

13 Q. That's what you hoped for. And was it to --
14 was that to go, I guess, to Indianapolis, somewhere near
15 there was your first choice?

16 A. Yes.

17 Q. Were you wanting to go other places?

18 A. I was willing to go other places. Indianapolis
19 was my first choice. I was willing to go to
20 headquarters in D.C. as well.

21 Q. Were you -- were you wanting to get out of West
22 Virginia even if it wouldn't be Indianapolis or
23 Virginia/D.C. area or something like that?

24 A. No. There were only certain places I was
25 interested in going, Indianapolis, Ann Arbor. I would

1 go to Chicago. I would have gone to Columbus, Ohio.
2 There were different places we were looking at.

3 We were only supposed to be here a year when we
4 moved. It was a program that the bureau offered. They
5 can't get people to come here so they give you an offer.
6 They say come here for a year, you'll be a supervisor,
7 and then you can go back to the field and you'll keep
8 your supervisor pay for the rest of your career. We
9 were only supposed to be here for a year.

10 Q. Okay. I'll refer you to Exhibit 17 on the --

11 A. Yes.

12 Q. -- second page, third paragraph down -- second
13 full paragraph where you seemed to want to get out of
14 the area. You state at the bottom -- it's the last
15 three sentences. I've sent you the articles. You know
16 the research and statistics. And aren't the kids who
17 are stuck among hillbilly and in poor schools in West
18 Virginia. Those aren't our kids, kids who were taught
19 the importance of family, memories, and traditions from
20 the day they were -- day they were born.

21 A. That's right.

22 Q. It sounds like you don't like area --

23 A. Nor did Ellen.

24 Q. -- good schools and wanted to get out?

25 A. Nor did Ellen. When we moved here, she

1 investigated the schools and she was appalled. So she
2 made us enroll the children in Morgantown Learning
3 Academy, a private school.

4 She hated it as much as I did being here, only
5 because it lacks family and lifelong friends and
6 education, an emphasis on education, cultural
7 activities. We were into the theater, concerts, those
8 sorts of things, outdoor cafes, things that we just
9 didn't find here.

10 And, in fact, it came to be true because when I
11 moved my children to Indianapolis, after we arrived, the
12 counselor called me and said your children are two years
13 behind where they should be.

14 Q. Okay.

15 A. So our fears were founded.

16 Q. Okay. So it's fair to say the area -- you
17 didn't think it was educated enough, sophisticated
18 enough for your kids?

19 A. Not educated enough nor sophisticated enough,
20 but there are plenty of educated people here and there's
21 lots to do and I have some of my best friends are from
22 here. My fiance is from here.

23 I loved a lot of things about this, but the
24 things that were important to me focus a strong
25 commitment to education, public libraries, cultural

1 events, those were lacking. We've lived all over the
2 United States, and they're lacking here.

3 Q. Okay.

4 A. My son was in an AP English here. He was a
5 straight A student in Morgantown High School. And then
6 we went to West Virginia -- or Indianapolis and they
7 said that they're two years behind where they need to
8 be. I talked to my son about it, and he said it's
9 completely different. I said give me some examples. He
10 said, in English class, we read the classics and then we
11 write papers about them and we have discussions about
12 them. And in AP English class at Morgantown High
13 School, instead of reading Romeo and Juliet, we watched
14 two different movies about Romeo and Juliet and were
15 quizzed on the movies.

16 Q. Okay. Okay. I have some questions about
17 Exhibit 30. It's the dismissal order with attachments.
18 Okay. First, you said -- the first paragraph where you
19 acknowledged probable cause, that was about a false
20 statement you made?

21 A. I signed the agreement, but I did not believe
22 probable cause existed. You're right.

23 Q. Okay. You --

24 A. Nor did Marcia Ashdown, nor did my attorney,
25 and I don't believe Ellen did as well. It was just at

1 Marcia Ashdown's insistence. She told Benninger so that
2 she could protect, quote, her boys. She said she was
3 getting ready to retire and that's not the note she
4 wanted to leave on, where her boys would be sued.

5 Q. Do you think they -- do you think all four of
6 you signed falsely not believing that there was probable
7 cause?

8 A. I can't speak to anybody else.

9 Q. Actually -- okay. I'll correct that. You're
10 the -- I guess you're the only one acknowledging there's
11 probable cause in this attachment, this agreement.

12 MR. CROOKS: Object to the form of that
13 question.

14 Q. Okay. Paragraph 1 states, "Scott Ballock
15 acknowledges that probable cause existed for the West
16 Virginia State Police to file the issuance of the
17 warrants in this case pursuant to West Virginia Code
18 61-3C-14a and 61-2-9a." Okay.

19 The -- there's nothing in there saying that
20 Ms. Costlow or Mr. Benninger or Ms. Ashdown acknowledge
21 probable cause.

22 A. Correct.

23 Q. It was just you.

24 A. Correct.

25 Q. Okay. I believe you stated that you made the

1 false statement with your attorney's approval or --

2 A. Upon my attorney's advice.

3 Q. Advice. Okay. And that you lied to the Court
4 to benefit your kids; right?

5 A. I signed the statement to benefit my kids.

6 Q. A statement you knew was false?

7 A. A statement I didn't agree with.

8 Q. Okay. And then the -- I'll go to the next
9 paragraph. It states you acknowledge communicating via
10 email with Ellen Costlow after it is alleged that a
11 letter was sent to him asking him to stop such
12 communications to Ellen Costlow.

13 A. That's factually correct.

14 Q. Okay.

15 A. I did not receive the letter, but it was sent
16 to me.

17 Q. But, as we've gone over, you received any
18 number of emails or texts saying stop, don't call me,
19 something indicating that she didn't want you to contact
20 her?

21 A. Correct, interspersed with her contacting me.

22 Q. Contacting you in ways that we have no record
23 of?

24 A. In some instances we have records of, yes. I
25 didn't think this would have been an issue. Otherwise,

1 I would have recorded it.

2 Q. And you weren't -- you weren't charged with
3 anything violent; right? The basis of the criminal
4 charges in the second paragraph is that you contacted
5 her after she told you not to?

6 A. Correct.

7 Q. And you acknowledge making all the contacts and
8 the emails that were -- at least you're not --

9 A. I'm not denying.

10 Q. You're not disputing the record of emails and
11 the text messages?

12 A. I am not disputing that.

13 Q. Okay. And you called the Cooper-Lehki report
14 exculpatory evidence?

15 A. I did.

16 Q. The Cooper-Lehki report doesn't change the fact
17 that you made the -- that you sent the texts and emails
18 to Ellen and doesn't change the fact that she asked you
19 not to; correct?

20 A. Correct.

21 MR. PHILLIPS: Okay. I was just told we
22 have to switch the tape soon. I was looking for
23 something that would -- that you can answer quickly.

24 BY MR. PHILLIPS:

25 Q. Okay. You -- I guess you stated that you

1 believe Lieutenant Kief abused the judicial process from
2 -- by giving information that came from Ms. Costlow to
3 the FBI; is that accurate?

4 A. He at least solicited it. I don't know what he
5 gave them.

6 Q. Okay. Oh, I thought that -- I thought your
7 claim with abuse of process was that he got around the
8 order forbidding Ellen to communicate with the FBI?

9 A. Correct.

10 Q. But if he didn't communicate with -- if
11 Lieutenant Kief didn't pass this on to the FBI then that
12 order was not circumvented.

13 A. He attempted to circumvent it. He would have
14 attempted to circumvent it. I don't have any reason to
15 believe that he elicited and solicited information from
16 Ellen, derogatory information and then didn't pass it
17 on.

18 Q. Okay. So now you're saying you don't know if
19 he talked to the FBI?

20 A. I know he talked to the FBI. I don't know the
21 full extent of what he told them.

22 Q. Okay. You don't know if it was -- you don't
23 know if it's information he got from Ellen after your
24 criminal case was dismissed?

25 A. No.

1 Q. Okay. Because that's the order you were
2 talking about him circumventing; correct?

3 A. Whether it was obtained before or after the
4 dismissal, the order was she shall not provide any
5 disparaging information. And Kief was soliciting from
6 Ellen disparaging information about me.

7 Q. But, if information was known long before the
8 -- long before the case was dismissed, then Ellen
9 wouldn't be violating the order.

10 A. That's not true. The order didn't say she
11 shall not provide certain disparaging information. The
12 order was you shall not provide any disparaging
13 information to the FBI. And Kief asked her to provide
14 disparaging information about me so that he could
15 provide it to the FBI circumventing the judge's order.

16 Q. Right.

17 A. The order was very clear, you shall not provide
18 any disparaging information, not unless... There was no
19 unless or but or...

20 Q. But if you're saying that Kief gave this
21 information to the FBI, he could have known it long
22 before there was ever an order preventing Ellen from
23 sharing anything.

24 A. Then I don't know why I would have had to ask
25 her for that disparaging information.

1 Q. When did he ask her for that information?

2 A. I don't know when. But in her response, she
3 says rhetorically -- and I'm sure she did this to set
4 herself up for a defense to look to say --

5 MR. PHILLIPS: We need to take a break.

6 THE VIDEOGRAPHER: The time is 1639. We
7 are off the record.

8 (There was a short break in the
9 proceedings.)

10 THE VIDEOGRAPHER: We are back on the
11 record. The time is 1643.

12 BY MR. PHILLIPS:

13 Q. Okay, Mr. Ballock. I want to go to the
14 questions about the Cooper-Lehki report. First off, it
15 was a custody evaluation --

16 A. Yes.

17 Q. -- right? Ellen Costlow was never a patient of
18 hers for purposes of diagnosis or anything like that.
19 It wasn't --

20 A. Correct. Ellen, in an attempt to get full
21 custody of the children and lifetime alimony payments,
22 rather than tell the Court that the reason our marriage
23 was breaking up was because she met Kenny Ice online and
24 wanted to live with him, she told the Court that I beat
25 her to include in front of her -- in front of the

1 children, that I was physically violent to her, that she
2 suffered from battered woman syndrome.

3 So the Court said let's see if that's true.
4 I'm going to appoint the foremost expert in battered
5 woman syndrome, Christi Cooper-Lehki. And she conducted
6 what she described as the most exhaustive investigation
7 she's ever done.

8 Q. And you gave that full report to the FBI in
9 June 2017?

10 A. Yes.

11 Q. And you say that you obtained that report on
12 some motion or some paper filed with the family court by
13 Ms. Costlow; right?

14 A. I think the motion was filed by me. But, in
15 response, she submitted paperwork and included in that
16 paperwork was the report that she was not allowed to
17 have in her possession.

18 Q. Was it the full report or excerpts of the
19 report?

20 A. It was the full report.

21 Q. Okay. I believe you said that you received
22 from Judge Minor the full report attached to an order;
23 is that --

24 A. No. We were leaving the courtroom that day
25 after everything had been resolved and he said, oh, I --

1 something to the effect of I forgot to give you these,
2 these are the attachments that she submitted. And I
3 grabbed them on my way out and put them in my backpack
4 and left.

5 Q. Okay. You're saying under oath that the full
6 report was attached to a motion?

7 A. The full report was given by Ellen to Judge
8 Minor, and she was using it for some reason. I don't
9 know why. And then he gave me copies, I guess, of what
10 she gave him. Included in that, was the report.

11 Q. Okay. Okay. You're testifying you received
12 the full report directly from Judge Minor approximately
13 when?

14 A. I don't know when that was.

15 Q. Okay. Just a couple of questions following up
16 on Mr. Jeffries' examination about your contact with
17 Lieutenant Kief about the allegation that Ms. Costlow
18 and Trooper Berry were involved in a relationship.

19 First, you said in the summer of 2012, you were
20 not concerned about -- you thought there might be a
21 relationship but it didn't bother you; right?

22 A. Correct.

23 Q. But you -- but you mentioned this to Lieutenant
24 Kief and you were concerned that there was no
25 investigation?

1 A. No. No investigation into Berry? No.

2 Q. Yeah.

3 A. No.

4 Q. Did that concern --

5 A. No. We were approaching -- we were two weeks
6 away from the final custody hearing. I was looking
7 through the materials that I had, and I was reminded
8 that there was a violent episode at Ellen's house
9 between her and Kenny Ice at which the West Virginia
10 State Police responded. And I was concerned that my
11 daughter was there during that violent episode, and I
12 wanted the details.

13 Q. Yeah.

14 A. So I -- and I found out that they didn't have a
15 report.

16 Q. Okay.

17 A. So the purpose of my call to Kief was to ask is
18 that true, is there not a report. And he said that's
19 true, there's not a report, in so many words.

20 And I asked him is that common practice. And
21 he said -- he confirmed that, that that's not uncommon.

22 Q. Okay.

23 A. And he got angry with me and he said what
24 business is it of yours anyway. I said, well, it's my
25 house, my daughter was there. Your daughter wasn't

1 there. And my daughter will testify that she was there.

2 And then there was -- then I may have brought
3 it up, or he may -- I don't know. But then there was a
4 back and forth about Kief (sic). And he said something
5 like I looked into it, there's nothing there. I don't
6 know. But I got off the phone relatively quickly
7 because it was apparent that he didn't like me, he
8 didn't want anything to do with me.

9 Q. But you don't know what -- do you allege that
10 there was any -- are you alleging that the state police
11 did anything wrong by not investigating or not doing an
12 adequate investigation of any relationship between
13 Ms. Costlow and --

14 A. That's my suspicion. That's my suspicion
15 because, as you'll see when the deputies arrived at her
16 house on another violent altercation and Kenny was
17 stabbed, she did the same thing. Not the same thing, I
18 should say, because I don't know what she did there.
19 She begged the deputies to keep her name out of the
20 report and keep Kenny's name out of the report because
21 it would reflect poorly on her in the divorce
22 proceedings.

23 It would not surprise me and my suspicion is
24 that she did the same with the West Virginia State
25 Police. Perhaps that's when she met Berry. I don't

1 know. I don't know. But I found it odd, given all the
2 other circumstances, that police responded to the scene
3 of a violent incident where glass was broken, where a
4 gun was involved, where a young child was, and -- not
5 that any arrests weren't made, but that there was no
6 documentation of it whatsoever. It's as though it never
7 happened. And the policy manual for the West Virginia
8 State Police says that they're supposed to document
9 their interactions.

10 Q. Okay. I just want to make clear though you're
11 not alleging that should have been an investigation of
12 any relationship between Costlow and Berry?

13 A. Oh, no. I think there should have been.

14 Q. Based --

15 A. Based upon --

16 Q. Based upon -- if I can --

17 A. The allegations by Kenny Ice.

18 Q. Okay. And --

19 A. And then Berry's unusual statement and the
20 contradictory reasons that Ellen gave for his being
21 there earlier in the day on his time off, that she had
22 his personal cell phone number, that sort of thing, that
23 she called and asked for him when she called 911.

24 So, no, I think -- I think that they did not
25 fully and adequately, if at all, investigate that

1 allegation about Berry's affair.

2 Q. This was, well --

3 A. It's a pretty serious allegation.

4 Q. I remember from your --

5 A. It's a pretty serious allegation to not have
6 any record of the results of your investigation, your
7 interviews, or anything like that except one page of
8 scribbled notes.

9 Q. Well, but I think the basis was you talking to
10 Lieutenant Kief. And your information was something
11 Kenny Ice had said about a text that you didn't get to
12 look at? Is that --

13 A. Kief and I did not have that conversation. No.

14 Q. Oh. So he didn't -- so Kief didn't even have
15 that information?

16 A. No.

17 Q. So --

18 A. But he would have had he talked to somebody
19 else. But, of course, if you have a predetermined
20 notion of how the investigation is going to come out,
21 you don't talk to other people who might provide
22 contradictory information.

23 Q. I'm just confused as why you think they should
24 do an investigation when you, yourself didn't think it
25 was a big deal?

1 A. I don't care if Berry's having sex with Ellen.
2 I didn't give a shit. What I cared about was that a law
3 enforcement officer was engaging in such unprofessional
4 behavior. And my father's concern for reaching out to
5 him was because Ellen has a history -- a documented
6 history -- Christi Cooper-Lehki confirmed that Ellen has
7 a history of having affairs with other men and then
8 going to the wives and sharing with them that -- those
9 affairs, to include videotapes and pictures and
10 communications. And he wanted, he said, to save Chris
11 Berry that fate.

12 Q. Did your father know Mr. Berry?

13 A. No.

14 Q. Okay.

15 A. I don't even know if he knew his name at that
16 point.

17 MR. PHILLIPS: No further questions.

18 MR. CROOKS: Okay. Let me just make a
19 quick note here.

20 Is my microphone active? Can you hear me?

21 THE VIDEOGRAPHER: Correct.

22 MR. CROOKS: All right.

23 THE DEPONENT: Let me say one more thing.
24 During one of the times Ellen visited me in person, she
25 liked to use the phrase I'm untouchable, I'm golden.

1 And she said that she had friends in law enforcement now
2 as though it were a threat. I wanted to get that out
3 there as well.

4 CROSS-EXAMINATION

5 BY MR. CROOKS:

6 Q. Scott, I want to ask you some questions today.
7 This is going to be apropos a lot of different topics
8 that were addressed to you by the other two attorneys
9 here today. So we're going to move around topic to
10 topic maybe even --

11 A. Okay.

12 Q. -- maybe even come back from time to time to
13 different topics. But it's not going to be near so long
14 as the time that it took to respond to all the questions
15 you've answered so far today.

16 Firstly, my memory and my note here says that
17 you and Ellen were married in June of 1991; is that
18 accurate?

19 A. Correct.

20 Q. Okay. How did you meet her?

21 A. My very first week of college, showed up at
22 college, and we met that first week.

23 Q. Where was that?

24 A. Indiana University in Bloomington, Indiana. I
25 was the coach of the intermural football team and I was

1 trying to recruit girls to play on the team. And I
2 asked her if she wanted -- it was mid -- it was not
3 midnight. It was dark. It was late. I asked her,
4 "Would you like to play football?" And she said, "Now?"
5 And that's how we met.

6 Q. Okay. Did you date a long time before you
7 married?

8 A. Five years -- six year -- five -- five years.

9 Q. Okay. So your first contact with her then goes
10 back to about 1986 --

11 A. Yes.

12 Q. -- if I understand this accurately?

13 A. Yes. I was 17.

14 Q. You were 17 when? When you first met her?

15 A. When we met.

16 Q. Okay. All right. So, is Ellen the same age as
17 you?

18 A. She's a year older.

19 Q. Okay. During that five years that the two of
20 you were together before you married, do you know
21 whether she was monogamous with you?

22 A. No. She cheated on me then.

23 Q. Okay. So this sexual adventure -- her appetite
24 for sexual adventure was something that showed itself
25 right from the start of your relationship?

1 A. Yes, fairly early on. Yes.

2 Q. Okay. Well, let me ask you, did that cause you
3 any conflicted feelings about staying in the
4 relationship?

5 A. Sure.

6 Q. Did you talk to her about that?

7 A. Yes.

8 Q. You obviously went on to become married. Did
9 you have any agreement as to whether your marriage was
10 going to be a monogamous one or an open marriage?

11 A. Yes. It was to be monogamous.

12 Q. Was it, in fact, monogamous for any period of
13 time, to the best of you -- of your knowledge?

14 A. Yes.

15 Q. How long?

16 A. I thought it was all the way up until she had
17 children. But, then again, I told you Jeff told me when
18 he was 30 about the incident between he and Ellen when
19 she was in college.

20 Q. Okay. This is a cousin of yours?

21 A. Yes.

22 Q. He was 14 at the time that Ellen seduced him?

23 A. Yes.

24 Q. Did you talk to her about that?

25 A. Yes.

1 Q. Did she admit it?

2 A. Yes.

3 Q. Okay. Well, was this the first time that you
4 had ever heard of any such behavior on her part?

5 A. Yes.

6 Q. Did you have children together by that time?

7 A. Yes.

8 Q. I'm sorry. I don't have this timeline mastered
9 to the point of being able to say it myself here. Your
10 son is the older child?

11 A. Yes.

12 Q. That's Tom. What year was he born?

13 A. 2001.

14 Q. All right. You call him Tommy?

15 A. Tommy.

16 Q. Because your dad is Tom?

17 A. Correct. And Tommy likes Tommy.

18 Q. Okay. So Tommy was born in 2001, and his
19 sister Summer was born what year?

20 A. 2003.

21 Q. My note indicates that you were aware of your
22 wife at the time, Ruth Ellen Costlow, seeing other men
23 for sex outside of your marriage as early as 2003. Is
24 that square with your memory of things?

25 A. Yes.

1 Q. So that would have been the same year that
2 Summer was born?

3 A. Yes.

4 Q. How did you first learn that this was
5 happening?

6 A. I don't remember specifics about how I learned.

7 Q. There was some discussion today about
8 Craigslist. I think everybody knows what that is. Did
9 that have anything to do with your discovery of her
10 sexual liaisons outside of your marriage?

11 A. Well, when she would admit to me and I would
12 ask her how are you meeting these people, she told me
13 via Craigslist.

14 Q. Okay. The issue of her infidelity, did you
15 seek to address that through any couples counseling at
16 the time?

17 A. No.

18 Q. Why not?

19 A. We thought we could work through it together.

20 Q. Were you working at the FBI at that point?

21 A. Yes.

22 Q. How long had you been with the FBI by 2003?

23 A. I'd just started in 2003.

24 Q. Okay.

25 A. June 1st.

1 Q. I'm not sure this is clear yet. How soon after
2 you finished your education did you begin your career at
3 the FBI?

4 A. After my master's degree program I went to
5 Chicago where I was a U.S. probation and parole officer
6 for the district court. I was there for two years
7 before I was transferred to Las Vegas. And then in --

8 Q. What year are we talking about, Scott?

9 A. So, probation in Chicago from 2 -- from 1994 to
10 1996. Probation in --

11 Q. So you were married at that point?

12 A. Yeah.

13 Q. You took Ellen with you and you lived in
14 Chicago for two years; is that true?

15 A. Yes. And then she said I can't live here
16 anymore, being three hours away from my parents is too
17 close, we need to move. So I put in for a transfer and
18 we moved to Las Vegas.

19 Q. She was complaining that Chicago was too close
20 to her family?

21 A. Yes. She doesn't -- she was always conflicted
22 with her parents.

23 Q. I see. All right. So you moved to Vegas and
24 your job there was what?

25 A. U.S. probation officer for the district of

1 Nevada.

2 Q. So it's more of the same kind of work you were
3 doing in Chicago?

4 A. Yeah.

5 Q. All right. Did you transfer because your
6 supervisors sent you there, or did you ask for it, the
7 transfer?

8 A. No. Ellen asked me to get a transfer as far
9 away from Chicago as we could. And so I applied to
10 several different places. And I inter -- I was able to
11 interview in Las Vegas and they accepted my transfer.

12 Q. Okay. Ellen was a student in the same college
13 as you when the two of you met if I understand what
14 you're telling me.

15 A. Yes.

16 Q. What kind of program was she in?

17 A. She was in the teaching school, the School of
18 Education.

19 Q. Did she get her degree, do you know?

20 A. She did.

21 Q. Was it a bachelor's?

22 A. Yes.

23 Q. Did she ever get any degrees beyond bachelor?

24 A. She was working toward her master's. I think
25 she might have about 32 credit hours towards her

1 master's.

2 Q. Okay. So as matters stand today then, she is
3 somewhat short of her master's degree?

4 A. I have no idea where she stands. I mean, she
5 may have gone back to finish that. I don't know.

6 Q. I see. Well maybe that wasn't an appropriate
7 way to pose the question. The last you knew, Ellen was
8 a few hours short of getting her master's degree in
9 education --

10 A. Yes.

11 Q. Is that a fair statement?

12 A. Yes.

13 Q. Okay. How many different men would you say you
14 discovered Ellen having relations with outside of your
15 marriage?

16 A. Just a few.

17 Q. Okay.

18 A. That was my discovery. Via the online
19 communication with her she admitted to many more.

20 Q. Oh, I see. Well, can you give me a grand
21 total? I mean, how many different men are we talking
22 about that you ultimately learned about, regardless of
23 how you learned about it?

24 A. About 45.

25 Q. What did that do to your feelings for this

1 woman?

2 A. I had separated myself emotionally from her.
3 We lived in separate bedrooms. My entire world was the
4 children and Ellen. I had consulted a divorce attorney
5 who told me that divorce laws were so favorable to women
6 that the pendulum had swung back toward being in favor
7 of women that unless there were cigarette burns and
8 broken bones I was going to get to see -- Ellen was
9 going to get custody of the children and I would get to
10 see my children on every other weekend and every
11 Wednesday night, and I wasn't willing to do that.

12 Q. Where were you living at the time that you got
13 this advice from a lawyer?

14 A. Ann Arbor.

15 Q. So this was under Michigan law that you were --

16 A. Yeah. So I tolerated a lot.

17 Q. Okay. So, Ann Arbor -- so, just so we're clear
18 about this, this would have been 2003, when you first
19 began learning of this or some other subsequent time?

20 A. 2006.

21 Q. All right. So three years into your knowledge
22 of her activity outside of your marriage?

23 A. Yes.

24 Q. Okay. Well, prior to your discovery of her
25 sexual liaisons outside your marriage in 2003, did you

1 have an affectionate relationship with your wife that
2 included sex?

3 A. Yes.

4 Q. I mean, you had two children?

5 A. Yeah.

6 Q. So this distance that came between the two of
7 you, this emotional distance that you've admitted to
8 repeatedly today, would it be fair to say that was a
9 consequence of your learning that she had sex adventures
10 outside your marriage?

11 A. That's fair. Also, I know everybody says it,
12 but I was just obsessed with my children. And, like I
13 said, she would say can we please go on a date Friday
14 night. And my response was always we only have so many
15 years with the kids and I want to spend my time with
16 them.

17 Q. Well, I mean, we're here in deposition and
18 you're under oath so let me ask you the question. Was
19 there also an element of resentment on your part toward
20 your wife over the sexual activities she was having
21 outside your marriage?

22 A. Yes and contempt.

23 Q. So, in 2012, all right -- let's come up a
24 little closer to the current time -- my notes indicate
25 that the best that you could figure it out Kenny Ice

1 began having a relationship with your then wife, Ellen
2 Costlow -- I guess she went by Ellen Ballock at the
3 time?

4 A. Yeah.

5 Q. Okay. That Ellen Ballock began having a
6 relationship with Kenny Ice, Jr., as of about June 2012;
7 is that accurate?

8 A. According to Kenny, yes.

9 Q. According to Kenny. When was it that you found
10 out about him?

11 A. Before September 14th and after June, sometime
12 in the late summer.

13 Q. All right. What were the circumstances? I
14 mean, how did it happen that you learned about Kenny Ice
15 Jr., and his relationship with your wife?

16 A. She shared it with me. And she said, if you
17 don't get your act together and pay attention to me, I'm
18 going to leave you.

19 Q. What did she mean -- what did you take her to
20 mean when she said get your act together? What did she
21 want from you?

22 A. She wanted my focus and attention to be on her.
23 She would often say who do you love more, the kids or
24 me. And I would always say I can't answer that, that's
25 a silly question. And she would demand to know. Who do

1 you love more, the kids or me? I would never answer it.
2 And one day I was fed up with being asked that and I
3 told her the truth is, if a bus was barreling down the
4 street and going to hit the kids or you, I'd push them
5 out of the way if I could only push two out of the way.
6 And she screamed and went into hysterics and said you
7 should love me more, you chose me.

8 She was violent toward Tommy, I believe,
9 because she was taking her anger out on me toward him
10 because he's very much like me.

11 Q. Did you ever witness Ellen Ballock commit acts
12 of violence against your children?

13 A. None that I would consider egregious, smacking
14 him with a wooden spoon. But I would often have to come
15 home from work in the middle of the day because Tommy
16 would be in the closet calling me and saying come home
17 and help me, mom's attacking me. I would have to go
18 home and mediate those fights and those disputes. It
19 increased to an unacceptable level after the separation.

20 Q. Okay. Did your son Tommy ever tell you that
21 his mother tried to choke him by putting her forearm
22 across his throat?

23 A. Yes.

24 Q. Was this -- when was this?

25 A. This was after I left the house and the

1 children were still there with her. She was engaging in
2 all sorts of unacceptable, concerning behaviors. Summer
3 wasn't going to school -- to the private school we were
4 sending her to because Ellen couldn't get up and take
5 her to school.

6 Tommy told me that -- he slept in a bedroom
7 that was above the garage so he would hear the garage
8 door go up in the middle of the night and look out and
9 see her big white SUV driving away. And then he'd go
10 downstairs to look for her or a babysitter and find no
11 one. So she was leaving them at home alone.

12 He told me that they would fight and when he
13 would walk away from her she would -- he had long hair.
14 He never got it cut from the time he was a kid. He
15 looked great. He had this long flowing hair. People
16 thought he was a girl. And when he would walk away from
17 her she would grab him by the hair and yank him back.
18 And it upset him so much that when he came to live with
19 me -- again, he was 11 and he had had long hair his
20 whole life. He said I can't have this hair anymore.

21 Q. Okay. How about Summer, your daughter. Did
22 she ever report physical acts of violence perpetrated by
23 her mother?

24 A. No.

25 Q. When you said earlier that Ellen had sexualized

1 your daughter what did you mean by that?

2 A. That's a term that I learned from Christi
3 Cooper-Lehki. Ellen started dressing Summer up like a
4 whore. She was eight, and she was putting make-up --
5 just a whole bunch of make-up on her face, making her
6 wear inappropriate clothes. She offered Kenny Ice --
7 according to Kenny, she offered if he wanted to see
8 naked pictures of Summer.

9 Q. Did she ever do that?

10 A. No. Kenny said -- Kenny's quote was, "Hell no.
11 I ain't no pervert." She introduced Summer and
12 socialized him (sic) with a child molester, Carl Vincent
13 Taylor. Then, when I finally got Summer to tell me the
14 truth about it, she said the reason I lied to you is
15 because Mommy said if anybody ever found out we would
16 both get in trouble. She said to me in the car the
17 other night that she lied to the court investigators
18 about Carl Vincent Taylor.

19 Q. Okay. Did Summer ever say whether her mother
20 ever took naked pictures of her?

21 A. No.

22 Q. The subject of video and your wife having sex
23 with other men, what did you discover in that respect?

24 A. Just that she had been taking the videos of
25 them.

1 Q. How did she do it?

2 A. I don't know.

3 Q. I mean, how could she have sex and take video
4 at the same time?

5 A. I don't know. Set it up somewhere. I don't
6 know. She --

7 Q. Let me ask you another question before you go
8 on with that. Were you ever involved in any of that?

9 A. No.

10 Q. Some people do that sort of thing, I guess.
11 And I think there may be a suggestion from somewhere in
12 this case that you not only knew about it but
13 participated in it.

14 A. Yeah. That's what she says.

15 Q. Uh-huh.

16 A. But that's -- that's her M.O. If something
17 reflects poorly on her, blame someone else. And what's
18 she doing? She's blaming me.

19 Q. Right.

20 A. She -- in fact, that behavior continued after
21 our separation because Kenny Ice told Christi
22 Cooper-Lehki, and I guess Ellen confirmed it, that Ellen
23 begged Kenny to have sex with another girl while Ellen
24 hid and videotaped it and masturbated while he did that.
25 So her behaviors continued after our separation.

1 Q. In discovery of this case there's been some
2 video that was apparently recorded on a cell phone
3 camera. And it appears to show Ellen having sex with a
4 man in a truck. Do you know what I'm talking about?

5 A. Yes. Scott Kirby.

6 Q. Was that Scott Kirby?

7 A. Yeah.

8 Q. How did that video come into your possession?

9 A. When I learned that Ellen had stolen and sold
10 or given away a lot of the FBI property, the security
11 division said tell her she needs to give what she has
12 back to us. So she gave me back a thumb drive -- a
13 bureau thumb drive that was -- said Classified on it.
14 It was in my Go bag.

15 Q. What's a Go bag?

16 A. A bag you keep in the event of being called out
17 quickly.

18 Q. All right.

19 A. And the thumb drive was in there. So we looked
20 at it to see if she placed anything on it, and that's
21 what she put on there. And, I imagine, in an attempt to
22 get me in trouble somehow.

23 Q. All right.

24 A. And it was time-stamped -- I remember I left it
25 at the home. It was time-stamped that it was

1 transferred onto that device long after I had left the
2 home.

3 Q. All right. The other recordings of Ellen
4 having sex with men, how did you come across those?

5 A. I searched for them in the house.

6 Q. Why were you searching for such a thing?

7 A. I was searching for anything, clues about her
8 infidelities.

9 Q. At what point in time are we talking?

10 A. In Ann Arbor.

11 Q. When you were living in Ann Arbor. So, help
12 me, Scott. When was that?

13 A. Between 2006 and 2011.

14 Q. Okay. What was going on that prompted you to
15 make a search of the house to see what you could find in
16 connection with her activity outside your marriage?

17 A. I always had a nagging feeling. I always never
18 fully trusted her.

19 Q. Did that have anything to do with your sex life
20 with Ellen?

21 A. Sure.

22 Q. Did you have -- I mean, when was the last time
23 you had what you would characterize as a normal, healthy
24 sexual relationship with your wife, Ellen Ballock?

25 A. Before we had children.

1 Q. Did you entertain the notion that, perhaps,
2 having kids might settle her down and make her happy and
3 result in a normal, happy life?

4 A. No. She was adamant that she didn't want
5 children. She did not -- did not -- did not want
6 children. And she was upset when I told her that I want
7 to have children so, if that means we have to separate,
8 then so be it. So she reluctantly had children.

9 Q. Okay. What did you understand Kenny Ice, Jr.'s
10 motivation to be to come to you and tell you what he
11 knew about not only his own relationship with Ellen but
12 her other activities that you've talked about today and
13 identified elsewhere in discovery of this case?

14 A. Kenny and Ellen had been fighting and they had
15 broken up. And he said to me that she -- he had
16 witnessed a lot of terrible things going on with the
17 children and he wanted to share that information with
18 me. His biggest concern was Summer's socialization with
19 the child molester.

20 Q. Okay. Did this have anything to do with the
21 two of you separating in September of 2012?

22 A. Did what have anything?

23 Q. What you learned from Kenny Ice, Jr., or were
24 you already separated at that point?

25 A. We were separated effective September 14th,

1 2012. Kenny had a relationship with her from June all
2 the way until he contacted me.

3 Q. I understand.

4 A. And when he contacted me --

5 Q. You'd already separated or --

6 A. Oh, yeah. I moved out of the house on
7 September 14th.

8 Q. That's all I'm trying to pin down.

9 A. I'm sorry.

10 Q. That's all right.

11 A. Yeah.

12 Q. It's been a long day.

13 A. I moved out of the house on September 14th and
14 Kenny moved in.

15 Q. Okay. All right. So we're clear then, Kenny
16 came to you and shared all this information after you
17 had moved out and he moved in?

18 A. Came out of the blue. I had -- I was shocked.
19 I got a text message from Kenny Ice.

20 Q. Okay. Did you ask him for that iPhone he gave
21 you?

22 A. He -- when he was telling me all of his
23 stories, he would say and I took pictures of it or I
24 would audio-record her screaming and yelling, I've got
25 text messages. And he volunteered. He said if you can

1 get that off of there, you can borrow my phone.

2 Q. Okay.

3 A. So he volunteered.

4 Q. What did you do in that direction?

5 A. I accepted his offer, and I found a company out
6 of Chicago called Forensicon that, for \$1,500, extracted
7 videos, pictures, text messages, email messages. They
8 said they did their best to extract -- recover deleted
9 items as well.

10 Q. Is that all the material that was turned over
11 to --

12 A. Yeah.

13 Q. -- Mark so he could put it on that file-sharing
14 site?

15 A. Yes.

16 Q. Is there any of that stuff that was held back?

17 A. No.

18 Q. All the texts and emails that Mark reviewed
19 with you during his examination, Deposition Exhibit 2
20 through -- well, the biggest part of 50 deposition
21 exhibits --

22 A. Yeah.

23 Q. Where were you emotionally in your
24 relationship, emotionally with Ellen at the point when
25 you were writing these texts and emails? How did you

1 feel about this relationship? Did you want it over?

2 Did you want to save it? Did you blow hot and cold?

3 A. I blew hot and cold.

4 Q. All right. Did Ellen have any hand in your
5 change of mind from time to time on that topic?

6 A. Yes, because she would give me hope that it
7 might work out.

8 Q. In the time that you have known Ellen, going
9 all the way back to when you first met in college, would
10 it be fair to say she can be a seductive person when she
11 wants to be?

12 A. She is -- yes. She has feminine wiles.

13 Q. Okay. You're being polite and civilized I
14 think. Why don't you be a little more explicit in what
15 you're saying? What do you mean?

16 A. She's very attractive. She's very well-spoken
17 and educated. She's very manipulative and she uses her
18 looks and her sex -- sexuality to get what she wants out
19 of people.

20 Q. Has she ever used those influences on you?

21 A. Sure.

22 Q. Would it be true to say that she used those
23 capacities on you during the time that these emails and
24 texts that were the subject of the charges for stalking
25 and harassment took place?

1 A. The main reason I tried to hold it together --
2 I didn't want to see my kids subjected to her crazy, to
3 the violence. And I didn't want to see my kids --
4 there's so many things that happened, and it was just --
5 it was occurring with such regularity, fights at the
6 home between her and Kenny, her not taking Summer to
7 school.

8 The reality is that, even if it meant going
9 back to a -- to a distant relationship where we still
10 lived separate lives, essentially, I wanted that. I
11 wanted to be able to be there for the kids to protect
12 them and to raise them. I didn't want to see them every
13 other weekend and only on Wednesdays.

14 Q. The divorce is final now, isn't it?

15 A. Yes.

16 Q. Were you awarded custody of your children?

17 A. I have full custody of the children.

18 Q. Did that come as any surprise to you when it
19 happened that way?

20 A. No. I warned her that that was going to
21 happen. I knew that -- I knew in my heart that the
22 psychiatrist was going to get to the bottom of things.

23 Q. Was the psychiatrist Dr. Christi Cooper-Lehki
24 -- was her involvement in the case the turning point in
25 your anticipation for how the child custody matter was

1 going to get resolved? Is that where you began to have
2 some hope that you would prevail on that issue?

3 A. Yes, because instead of Ellen getting to turn
4 on the waterworks and be a cute little girl in front of
5 the judge and share her false narrative, I knew that
6 somebody was going to actually look into things.

7 Q. And yet -- well, I caught myself about to
8 misstate something.

9 By the time Dr. Cooper-Lehki became involved
10 had all these texts and emails happened yet, the ones
11 that you --

12 A. Oh, the vast majority of them, yes. The texts
13 and emails declined significantly right before -- right
14 before the September 13th. They were voluminous before
15 then. And, yes, she said that she reviewed every text,
16 every email, every recorded conversation that Ellen
17 provided her because, unbeknownst to me, Ellen was
18 recording some of our conversations.

19 Q. You mean some of your telephone conversations?

20 A. Yes.

21 Q. Okay. How did you come to find out about her
22 recording it?

23 A. Through Cooper-Lehki.

24 Q. Dr. Cooper-Lehki got involved when, Scott?

25 A. Spring of -- early spring of 2013.

1 Q. Okay. In all these emails and texts between
2 you and Ellen that were reviewed today, would it be fair
3 to say that they all predated the appointment of
4 Dr. Cooper-Lehki to look into this?

5 A. No. No.

6 Q. No?

7 A. Most of them, the vast majority of them.

8 Q. Okay. Well, I think I may follow your -- take
9 your meaning there. Deposition Exhibit Number 23
10 appears to be some texting that happened in September of
11 2013. That would have been well after Dr. Cooper-Lehki
12 was involved; true?

13 A. Yeah. That was after my arrest. September?

14 Q. I'm just looking at the date on -- let's see.
15 My apologies. This is a text messages in Deposition
16 Exhibit Number 23 between Ellen and Ronnie M. Gaskins at
17 his state police account.

18 A. Yeah. No. I stopped all communication with
19 Ellen after September 13th. But one week later, there
20 was an event at my children's private school at which
21 Ellen came up to me and grabbed my hand and walked me
22 around to show me the artwork of the kids and gave my
23 mom a hug and a big kiss and told her I love you.

24 So a week after I was arrested and she feigned
25 surprise about the arrest. She was like, I had no idea

1 they were going to do that, I am so sorry that happened
2 to you, I want you to know I had nothing to do with
3 that.

4 Q. Okay. Did you take her as truthful?

5 A. No.

6 Q. You knew she was lying?

7 A. Of course.

8 Q. Kimberley Compliment.

9 A. Yes.

10 Q. Her name came up today.

11 A. Yes.

12 Q. Am I right in understanding she was a
13 colleague?

14 A. No. She was just a friend of ours in
15 Indianapolis.

16 Q. Oh, I see. All right. Did you ever have a
17 romantic relationship with Kimberlee Compliment?

18 A. No. And she told Dr. Cooper-Lehki as much.
19 She was married to professional hockey player Remi
20 Royer. And Remi and I were very good friends.

21 Q. Okay. Well, I mean, you were a -- you were a
22 lonely man in your marriage. Did you have relationships
23 with other women outside of your marriage?

24 A. I did not. I was consumed by work and my
25 children.

1 Q. Has Ellen accused you of having affairs?

2 A. Yes. She accused me of having an affair with
3 Kimberley. And she was so convinced that it happened
4 that she attacked Kimberley with a knife. The same
5 thing she did to Kenny Ice.

6 Q. When did that happen? I didn't hear you put a
7 date on that.

8 A. I wouldn't have a date. It would have been
9 between 2003 and 2006 is all I can tell you, when we
10 were stationed in Indianapolis.

11 Q. Okay. All right. This --

12 A. Oh. She was so -- she was so insistent that I
13 was having an affair -- she was afraid of it because,
14 you know, I was gone a lot, I had an undercover alias, I
15 had an excuse to be out of the house -- that one time
16 she took my government phone while I was sleeping and
17 went through it and called two girls whose names were in
18 there and said something to the effect of this is
19 Scott's friend, we want to get together for dinner with
20 you. And these two girls freaked out and rightly so
21 because they were two girls that we had put in
22 protective custody and I was assigned to look over them.
23 So Ellen really screwed that up.

24 Q. Did that cause you any trouble within the
25 bureau?

1 A. For a little bit.

2 Q. Okay. I mean, did it --

3 A. No.

4 Q. Was it a black mark on your record?

5 A. No. It was okay, but I mean she...

6 Q. Okay. Let's talk for a second about late 2012,
7 we'll say the final quarter -- the fourth quarter of
8 2012.

9 A. Okay.

10 Q. What was going on between you and Ellen when
11 she would say give me until December and we'll see where
12 we are? Put that into context for me.

13 A. Give me until September, give me a year. We
14 separated in September. Maybe this will work out. What
15 was going on?

16 Q. Okay. I thought it was December, but it's
17 September.

18 A. Yeah.

19 Q. What was she -- was she talking about September
20 of 2012 or --

21 A. 2013.

22 Q. She's saying let's wait a year and see what
23 happens?

24 A. Yeah.

25 Q. So she wanted to be separate and apart for a

1 year and then consider whether to go ahead with the
2 divorce or to reconcile; is that a fair characterization
3 of where things stood?

4 A. At least on one occasion she expressed that.

5 Q. Okay. I mean, have you got her in writing
6 somewhere on that because these folks want to see
7 everything in writing?

8 A. I know, and I don't. I don't.

9 Q. Okay.

10 A. And that was face to face.

11 Q. Okay. Were you willing to act on that request?

12 A. It excited me.

13 Q. Why do you use the word excited?

14 A. It gave me hope.

15 Q. Okay. Were you still anxious and worried that
16 you could lose custody of your children to Ellen at that
17 point?

18 A. Yes.

19 Q. Was that your motivation for seeking
20 reconciliation?

21 A. My primary motive, yes.

22 Q. The arrest that happened, I guess it was Friday
23 the 13th --

24 A. Uh-huh.

25 Q. -- 2013, in September. Were you aware that

1 this was going to happen, that you were going to be
2 arrested?

3 A. No.

4 Q. It sounds like the FBI was aware.

5 A. Yes.

6 Q. It sounds like there was an FBI agent present
7 to, I guess, just observe what happened?

8 A. Yes.

9 Q. Did you know that this person was an FBI agent
10 when they were present in the room?

11 A. I had never met him, but he introduced himself
12 -- introduced himself as an FBI agent.

13 Q. Really. All right. So you didn't know this
14 person prior to that?

15 A. Correct.

16 Q. And he said I'm an FBI agent. So I'm going to
17 guess you probably said, okay, nice to meet you, but why
18 are you here?

19 A. I didn't even have to ask that. He very
20 quickly volunteered I'm here to make sure everything
21 goes okay for you.

22 Q. What did you take him to mean by that?

23 A. Just that he was there to observe and make sure
24 that -- be able to witness anything that happened.

25 Q. Okay. So, at the point that you met this agent

1 -- I'm sorry. I've forgotten the name. I can't -- I
2 know I wrote down what I thought I heard, but I --

3 A. I think it was John Hamrick.

4 Q. John Hamrick? Okay.

5 A. Again, I had never met him, and I haven't met
6 him since.

7 Q. All right. He didn't tell you they're going to
8 arrest you today, did he?

9 A. No. He didn't need to. The judge had told me
10 that before the start of the custody hearing.

11 Q. See, this is what I'm trying to get to, Scott.

12 A. Oh, sorry.

13 Q. That's all right. But I want to try to be as
14 accurate as we can be about this. At some point, you
15 were tipped off, and apparently it was the judge who
16 told you I guess there's going to be some state police
17 here today, they -- they're going to arrest you?

18 A. Yes.

19 Q. Okay.

20 A. So then I had to go through the whole morning
21 hearing waiting to be arrested.

22 Q. Did the judge tell you what the charges were
23 going to be?

24 A. No, I don't believe so.

25 Q. Okay. Maybe I'm wrong to presume that you

1 would have some questions upon hearing that. I mean,
2 didn't you ask the judge, Judge, what's it about, I
3 don't understand, what are they charging me with.

4 A. No, I didn't ask.

5 Q. You didn't?

6 A. Huh-uh.

7 Q. Okay. Your lawyer was there with you, your
8 divorce lawyer; right?

9 A. Uh-huh.

10 Q. Did you ask her or tell her or was she aware?

11 A. I don't believe she was aware.

12 Q. Okay. Who was Ellen's lawyer at that point?

13 A. Kevin Tipton.

14 Q. Kevin Tipton, your neighbor?

15 A. Yeah.

16 Q. Okay. Did you ask Kevin, Kevin, what's going
17 on?

18 A. No. I was on this side with Delby. He was
19 over there with Ellen.

20 Q. All right. So you just went through the
21 business of the divorce case knowing that you were going
22 to be arrested for something --

23 A. Yeah.

24 Q. -- later in the day?

25 A. Correct.

1 Q. And you knew that there was a fellow agent from
2 the bureau there to watch it all happen?

3 A. I didn't know that until I walked out to be
4 arrested.

5 Q. So did somebody say, well, it's time for you to
6 be arrested now, could you step out of the courtroom so
7 we can do it?

8 A. No. The judge, right before lunch, said let's
9 take a break and, you know, Scott, you've got some
10 business to attend to with the state police. And so I
11 went out there. Kief was in a conference room. Hamrick
12 was in the conference room. I shook Kief's hand. He
13 handed me the paperwork, told me a little bit about what
14 was happening, told me to go to the detachment after I
15 was -- after the family court hearing was over that
16 evening to be processed. And then they took me upstairs
17 where I went before the magistrate.

18 Q. Okay, and the magistrate, was that Holepit?
19 Who was it that arraigned you?

20 A. It was a female. It was Holepit, yes. That
21 was her name. Sandy?

22 Q. Sandy Holepit.

23 A. Yeah.

24 Q. All right. So it was a personal recognizance
25 bond?

1 A. Yes.

2 Q. In other words, on your honor and as a citizen
3 and an agent of the FBI you swear you'll honor your
4 commitment to show up?

5 A. Yeah, that sort of thing.

6 Q. All right. So did you have your weapon on you
7 at this point?

8 A. No. You can't take your weapon with you into
9 family court.

10 Q. Okay. Even if you're a federal officer?

11 A. Even if you're a federal officer. We can't
12 take our weapons into Disney World either.

13 Q. Of course not. Okay. So, if -- I mean, did
14 you leave your -- check your weapon downstairs with
15 security or where was your weapon?

16 A. I must have checked it with security. Yeah.

17 Q. Okay. So --

18 A. Or maybe I kept it in the safe in my trunk. I
19 don't remember.

20 Q. Okay. So Kief was the one who performed the
21 arrest and gave you the paperwork that advised you of
22 the charges; is that fair?

23 A. Yes.

24 Q. Were there any other troopers present at that
25 point?

1 A. No. I was pretty narrowly focused on Kief. I
2 don't know. I was told that there were others. I don't
3 remember seeing them.

4 Q. Okay.

5 A. I --

6 Q. Was that your first notice that day? Was that
7 your first notice that Ellen had gone to police and
8 complained about your communications with her?

9 A. Yes.

10 Q. Okay. Did she ever tell you or threaten you,
11 either in personal conversations, that is face-to-face,
12 over the telephone, or maybe in texts or emails that we
13 just don't have for whatever reason, you know, if you
14 don't stop this I'm going to go to -- let's start with
15 judge -- I'm going to go to Judge Minor about this?

16 A. No. And she should have. In fact, Judge
17 Minor, in his ruling, said that had Ellen gone to him
18 and given him her concerns he would have most certainly
19 enjoined my communication.

20 Q. Okay.

21 A. But --

22 Q. To your knowledge, did she ever go to the judge
23 about this?

24 A. She -- no. She never did. No, because she
25 wanted to harm me. She wanted me to lose my job. There

1 are numerous instances where she has said or done things
2 to indicate that she wanted me to lose my job.

3 Q. Excuse me.

4 A. Family court proceedings are private. And, had
5 she gone to the family court judge, I wouldn't have lost
6 my job. Having -- making a big scene at family court
7 with the West Virginia State Police and having me
8 arrested, she knew that would potentially cost me my
9 job.

10 Q. Uh-huh.

11 A. Tommy overheard her saying that she was trying
12 to get me to lose my job.

13 Q. Ever seen any written communications initiated
14 by Ellen to that effect?

15 A. There's one text message where she writes that
16 she has the upper hand over my career.

17 Q. Explain the context of what you saw.

18 A. That's the thing, a lot of this text -- the
19 format that we received the text messages and email
20 messages back from Forensicon, it's not very good with
21 order and context. She was talking to Kenny Ice,
22 talking about the proceedings, family court, and she had
23 I have -- wait. It said -- I wish I could remember the
24 exact quote -- that she had the upper hand over my
25 career.

1 Q. To whom was she communicating?

2 A. Kenny Ice, Jr.

3 Q. You said earlier today, according to my note
4 anyway, you can correct me if I've got it wrong, that
5 you offered to be interviewed but the troopers declined
6 that offer?

7 A. Yes.

8 Q. When did that offer happen?

9 A. I don't know when it happened. But from the
10 very first time I spoke with Benninger and repeatedly, I
11 said I want to talk to them, let them talk to me. And
12 he said I'll take care of that, I'll make the offer.

13 Q. Was this before or after your arrest?

14 A. After my arrest.

15 Q. Had to be, because you didn't know this was
16 coming until you got arrested; am I right?

17 A. Right.

18 Q. See. That was a trick question. I was trying
19 to trip you up there.

20 A. I wondered why you asked that.

21 Q. Okay. So this criminal case, it was pending
22 for three years?

23 A. Yeah. Judge Mullins had some sort of medical
24 issue and he was out for a long time.

25 Q. Were you anxious to get that over with?

1 A. Yes.

2 Q. Did you tell your lawyer, man, let's get this
3 assigned to a different magistrate or something, you
4 know, I want to get this over?

5 A. I didn't know that was an option. I didn't
6 offer it. He didn't offer it. I don't know.

7 Q. Okay. So you told Mike, your lawyer, that you
8 wanted to sit down with the other side and explain this
9 to them. Do you have any understanding as to why that
10 never came about?

11 A. No.

12 Q. All right. Do you know if Mike reached out to
13 them to offer that?

14 A. He told me he did.

15 Q. Okay.

16 A. He told me he also called the prosecutor's
17 office and asked for a sit-down.

18 Q. You testified that about a week after there was
19 an order -- I'm not real clear on whether it was
20 Magistrate Mullins or Family Judge Minor, but apparently
21 there was an order saying that -- well, perhaps it was
22 the family judge -- directed that Ellen should not share
23 any disparaging information with the FBI. And then it
24 was a week later -- are you with me now?

25 A. Yeah.

1 Q. Are you oriented to the subject I'm --

2 A. I'm sorry.

3 Q. -- trying to address?

4 A. Yes.

5 Q. Okay. How did you -- how did you learn that
6 Trooper Kief was collaborating with Ellen to try and
7 circumvent Judge Minor's order and disparage you to the
8 FBI? How did you learn about that?

9 A. Through the emails that we were provided by
10 defense during discovery.

11 Q. Okay. Was this prior to the time the motion
12 was granted and Judge -- Magistrate Mullins dismissed
13 both criminal charges against you?

14 A. My knowledge?

15 Q. Well, that's a fair question on your part
16 because it could be a couple different things, couldn't
17 it.

18 This order from the family judge saying that
19 Ellen should not communicate any disparaging information
20 to the FBI about you, first of all, what prompted the
21 judge to issue that directive? Were you going to him
22 with a motion saying, Judge, we're worried, you know,
23 that she's going to try and hurt my career?

24 A. Yes. There was discussions between Benninger
25 and Marcia about what would be in the agreement.

1 Q. So the --

2 A. And I knew that Ellen was trying to ruin my
3 career.

4 Q. How did you know that?

5 A. Because I read about it in text message,
6 because Kenny Ice told me, because my son overheard it,
7 because she admitted to it in a joint counseling
8 session, because she has threatened to do it numerous
9 times before, because I knew it would advantage her,
10 because she's vindictive and malicious, all of those
11 reasons.

12 Q. All right. So my surmise then is that your
13 lawyer in the family court case -- who would that have
14 been? Delby?

15 A. Delby Pool.

16 Q. Delby Pool listened to your concerns, took it
17 to family judge, and he heard it and then issued his
18 directive. Is that how it all came down?

19 A. No. We negotiated it. Ellen and I, through
20 our attorneys, negotiated what the settlement terms
21 would be.

22 Q. Settlement of the divorce or this dismissal of
23 the --

24 A. No. No. Settlement of the divorce. We're now
25 talking about the divorce; right?

1 Q. I'm trying to, yes.

2 A. Yes. Settlement of the divorce. And we said
3 that one of the conditions that we want is for Ellen to
4 agree to have no contact with the FBI. And on the
5 written piece of paper -- and Judge Minor ordered that.
6 On the written piece of paper which Ellen signed, no is
7 capitalized, both the N and the O, and it's underlined,
8 no contact with the FBI.

9 Q. Okay. And this is after you had already been
10 arrested and charged and the criminal charges had been
11 pending for quite some time; true?

12 A. Yes.

13 Q. They had not yet been resolved?

14 A. Correct.

15 Q. So subsequent to Judge Minor issuing his
16 directive, the motion -- it's been called a dismissal
17 agreement in deposition today, but the caption on
18 Deposition Exhibit 30 says Motion. Do you see where it
19 says that?

20 A. Yes. It was a motion presented by the
21 prosecutor.

22 Q. In fact, I don't see the words dismissal
23 agreement anywhere on this document, did you?

24 A. No. It was not a plea agreement. It was not
25 -- there's no agreement. It was a motion.

1 Q. What you initialed and signed is listed as
2 Attachment to Motion to Dismiss with Prejudice.

3 A. Yes.

4 Q. The words dismissal agreement, I couldn't find
5 those used anywhere in this attachment to the motion.

6 MR. JEFFRIES: Look in your response to
7 our motion to dismiss.

8 MR. CROOKS: I'm looking at the exhibit.
9 I'm looking at the exhibit, not your characterization in
10 this case.

11 Q. So let me ask you some questions that pertain
12 to this motion that was submitted to Magistrate Mullins
13 and entered. So was it your understanding that unless
14 you initialled and signed off on this attachment to the
15 motion that the prosecutor wasn't going to agree to
16 dismiss the charges against you?

17 A. That's right. She didn't need to put that in
18 there. She didn't need to put any of that in there.
19 She could have just dismissed the case. But she told
20 Benninger she was trying to protect her boys and she
21 insisted on that.

22 Q. Okay. Did you have any -- we already waived
23 attorney/client privilege with respect to this -- the
24 entry of this motion and the attachment to it. Did you
25 talk with your lawyer, Mike Benninger, as to whether the